TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

John H. Reagan Building
Room JHR 140
105 W. 15th Street
Austin, Texas

July 14, 2016
9:02 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
LESLIE BINGHAM ESCAREÑO, Member
T. TOLBERT CHISUM, Member
TOM H. GANN, Member
J.B. GOODWIN, Member

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
CALL TO ORDER
ROLL CALL
CERTIFICATION OF QUORUM
CONSENT AGENDA

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

811 PROGRAM

a) Presentation, Discussion, and Possible Action Authorizing the Department To Enter into a contract with the Department of State Health Services ("DSHS") to Assist DSHS in the Operation of a Program that Provides Housing Assistance to Certain Clients who Participate in DSHS' Home and Community-Based Services-Adult Mental Health ("HCBS-AMH") Program

COMMUNITY AFFAIRS

b) Presentation, Discussion, and Possible Action Authorizing the Department to Issue a Request for Proposals for one or more entities to Provide Organizational Assessments and Possible Associated Technical Assistance to awardees of programs funded through the Community Affairs Division programs

MULTIFAMILY FINANCE

c) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer 16409 Sansom Ridge Apartments Sansom Park 16415 Songhai at Westgate Apartments Austin 16416 Fairway Landings at Plum Creek Kyle

d) Presentation, Discussion, and Possible Action on Inducement Resolution No. 16-019 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2016 Waiting List for Sunrise Orchard Apartments
CONSENT AGENDA REPORT ITEMS

ITEM 2:  THE BOARD ACCEPTS THE FOLLOWING REPORTS:

a) Report on the Department's Swap Portfolio and recent activities with respect thereto
b) Report on recent Bond Finance activity
c) TDHCA Outreach Activities, June 2016

ACTION ITEMS

ITEM 3:  POLICY & PUBLIC AFFAIRS

Presentation, Discussion, and Possible Action regarding the Legislative Appropriations Request for State Fiscal Years 2018-19

ITEM 4:  ASSET MANAGEMENT

Presentation, Discussion and Possible Action regarding Waiver and Material Amendment to Housing Tax Credit Application

15306 Altura Heights Houston

ITEM 5:  COMMUNITY AFFAIRS

Presentation, Discussion, and Possible Action on Timely Filed Scoring Appeals under the Department's 2016 Emergency Solutions Grant ("ESG") Program Notice of Funding Availability ("NOFA")

TX-607COD City of Denton

TX-607SCL Lubbock Regional MHMR Center DBA StarCare Specialty Health System-VetStar Program (PULLED)

ITEM 6:  MULTIFAMILY FINANCE

a) Report and Possible Action regarding Third Party Requests for Administrative Deficiency

16118 The Standard on the Creek Houston
16380 Sierra Vista Lopezville CDP

b) Presentation, Discussion, and Possible Action on Timely Filed Scoring Notice Appeals under the Department's

ON THE RECORD REPORTING
(512) 450-0342
Multifamily Program Rules
16387 Cantabria Estates Apartments
Brownsville

c) Presentation, Discussion and Possible Action on Staff Determinations regarding 10 TAC §10.101(a)(3) related to Undesirable Site Features and 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics
16200 Kirby Park Villas San Angelo
16274 Rockview Manor Fort Hancock

d) Presentation, Discussion and Possible Action on Staff Determinations regarding Application Disclosures under 10 TAC §10.101(a)(4) related to Applicant Disclosure of Undesirable Neighborhood Characteristics
16108 Timber Ridge Apartments Chandler
16214 Heritage Pines Texarkana
16237 Hawks Landing Iowa Park
16246 Gala at Four Corners Four Corners
16251 Provision at Clodine Road Houston
16317 Blue Line Lofts Rowlett

e) Staff will present a summary of Determinations under 10 TAC §11.10 of the 2016 Qualified Allocation Plan related to
16130 Cottages at San Saba San Saba
16168 Stonebridge of Whitehouse Whitehouse

f) Presentation, Discussion and Possible Action on the draft 2016 State of Texas National Housing Trust Fund Allocation Plan and directing that it be published in the Texas Register

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

OPEN SESSION

ADJOURN

ON THE RECORD REPORTING
(512) 450-0342
MR. OXER: Good morning, everyone. I'd like to welcome you to the July 14 meeting of the Texas Department of Housing and Community Affairs Governing Board.

We'll begin, as we do, with roll call. Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Chisum is not with us today; Mr. Gann is not with us either.

Mr. Goodwin?

MR. GOODWIN: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here. That gives us a quorum, so we're in business.

Tim, lead us in the pledge to the flags.

(The Pledge of Allegiance and the Texas Allegiance were recited.)

MR. OXER: We have a few guests to recognize. Bobby Wilkinson, is Bobby here? Hey, Bobby. Glad to see the Governor's Office interested in what we're doing. For some reason this time of year tends to attract a lot of attention. I don't know what it is, it's something about money, isn't it, Counselor?

Anybody else we have here that I haven't seen...
and recognized?

(No response.)

MR. OXER: All right. Let's get to work. With respect to the consent agenda, Marni, did you have a modification, a correction/modification/amendment to make?

MS. HOLLOWAY: Good morning, Chairman Oxer, members of the Board. My name is Marni Holloway. I'm the director of the Multifamily Finance Division.

Item 1(c) on your consent agenda regarding application 16415, Songhai at Westgate Apartments, this is: Presentation, discussion and possible action on determination notices for housing tax credits with another issuer. We'd like to make a correction to the amount that's listed in your Board book. Your book appears at $742,439; we are correcting that amount to $781,526.

MR. OXER: So added another 5 or 6 percent on it.

MS. HOLLOWAY: Right. In final underwriting, that's where it came out.

We are also removing from the agenda item 1(d). That's the inducement for the Sunrise Orchard Apartments. We have a little bit more work to do with this applicant regarding the neighborhood, so we're going to continue with that and hopefully bring it back to you shortly.

MR. OXER: So on 1(d) you've essentially pulled
that until the next meeting.

MS. HOLLOWAY: Yes.

MR. IRVINE: A future meeting.

MS. HOLLOWAY: For a future meeting.

MR. OXER: A future meeting. Okay.

With modifications as Marni has listed, need a motion to consider on the consent agenda.

MS. BINGHAM ESCAREÑO: Move approval.

MR. OXER: Motion by Ms. Bingham to approve the consent agenda as modified.

MR. GOODWIN: Second.

MR. OXER: Second by Mr. Goodwin.

Is there a request for comment?

And one more note for housekeeping for anybody who hasn't been here, if there's an item you wish to speak on and that item is being considered, sit in the front row up here. When we're considering an item and you're sitting in the front row, I expect you to want to talk on that item, but that's okay if you don't on this. So you don't want to speak no this?

SPEAKER: Not on this item.

MR. OXER: Okay. Just trying to be clear and make sure everybody gets heard here.

Motion by Ms. Bingham, second by Mr. Goodwin to approve staff recommendation on the consent agenda as
modified. There's been no request for public comment. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. It is unanimous.

Okay. Michael.

MR. LYTTLE: Yes, sir. Chairman and Board, I'm Michael Lyttle, TDHCA chief of external affairs, presenting action item 3 which is: Presentation, discussion and possible action regarding the legislative appropriations request for state fiscal years 2018 and '19.

Every two years state agencies are asked to submit a legislative appropriations request, or what we call an LAR, to the Office of the Governor and the Legislative Budget Board. This document reflects each agency's anticipated needs for the next biennium. Several weeks ago, on June 30, the Office of the Governor and the LBB released a policy letter asking state agencies to include a 40 percent general revenue reduction in their base budget. In that letter we also received our LAR instructions which included the submittal deadline of August 5.

Today as part of the agenda item we're bringing
policy related LAR items to you for your approval. Specifically, we're bringing the required 4 percent GR reduction, our proposed approach for a schedule showing an additional 10 percent general revenue reduction, the administrator's statement which is essentially the introduction to the LAR and communicates our agency policies, and recommendations for requested changes to our appropriations riders, including the capital budget rider which identifies our major information system needs.

With respect to the 4 percent reduction, we do not yet have a specific reduction target as this is pending certification of our base reconciliation, but right now we're estimating it will be on the order of $1 million. Our recommendations are including taking the approach of reducing the impact on families and individuals that we serve through our programs and instead making the reductions to indirect administration and all but essential support for the Housing and Health Services Coordination Council. We're also recommending eliminating the affordable housing research and information program and the Balance of State technical assistance for rural Continua of Care.

The Housing Trust Fund and the Homeless Housing and Services Program would each be reduced by an estimated $63,000 over the biennium. Additional reductions include
in the 10 percent reduction schedule our further reducing the funding for the Trust Fund and for HHSP on the order of $1.2 million each over the biennium.

Recommended items in our capital budget, just so you know, include an update of our legacy systems, an upgrade of our PeopleSoft financial systems, implementation of recommendations that were made to us from the Department of Information Resources regarding information security assessment, as well as a new system for the Community Affairs programs that's going to help us meet federal reporting requirements. We propose to fund these projects through appropriated receipts and federal funds.

Additionally, we're recommending some technical changes to our riders, and we're seeking your approval today to submit this LAR to the appropriate offices by the August 5 deadline.

MR. OXER: Any questions from the Board?

It sounds like with respect to Curtis's shop, we've been running on an '86 GMC short bed for far longer than its useful life. Huh?

MR. LYTTLE: That and duct tape, yes, sir.

(General laughter.)

MR. OXER: Are there any questions from the Board?
MR. OXER: Then we'll need a motion to consider the resolution.

MS. BINGHAM ESCAREÑO: I'll move approval.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation on item 3. Is there a second?

MR. GOODWIN:

MR. OXER: Second by Mr. Goodwin.

You gentlemen wish to speak on this item?

MR. SAMUELS: Yes, sir.

MR. OXER: For the record, for everybody else, we'll start from the aisle and work out on the conversation here.

MR. SAMUELS: I want to thank you for allowing me to speak today. My name is Eric Samuels, president and CEO of Texas Homeless Network.

Texas Homeless Network is an agency that works across the state with communities large and small, but one of the major projects we have right now is working with rural communities through the rural Continuum of Care technical assistance grant that is offered through TDHCA. So today I'm speaking in opposition of the recommendation to eliminate funding under item 3 for the Balance of State technical assistance for the rural Continua of Care project which is under the earned federal funds category.
with the base revenue budget.

This is one of the few funding sources that helps communities in the Balance of State which extends from the Panhandle, up to Lubbock, down to Brownsville, over to Midland, over to Beaumont. This is something that we try to work with in communities. Homelessness is not different in our smaller communities than it is in our larger communities. What is different is that technical assistance and support is not offered. This is one way that we can offer that.

This is a $50,000 grant and we feel that with this money we are giving the State of Texas a large return. With this $50,000 we've grown the Balance of State Continuum of Care by $7 million. It's gone from $350,000 to $7.6 million. This funding also help us to provide technical assistance and training to around 400 people per month. This funding has allowed us to draw up to $200,000 in other federal funds. Without it we may not be able to draw those funds because we use the $50,000 as match.

This also helps us to assist the Texas Interagency Council for the Homeless to meet some of the required items by statute which specifically would be under duty number three, assist and coordinate for providing statewide services for all homeless individuals.
in the state.

So we feel that this money is a good investment for the State of Texas and we're getting a good return on that investment, and without it, we may not be able to continue at the rate we are. We also feel that while we have done a lot better over the years, we've reduced homelessness greatly, we still have 6,000 homeless in these communities, and of those there are nearly 700 families and over 1,200 children, so there's a lot of work still to be done and there's still some strategic planning going on in our communities that have not had that in the past. We're working with HUD on a TA project that is underway right now, and this funding helps us to continue that.

HUD's requirements for Continuums of Care grows every year so any loss in funding would just curtail our efforts in meeting those requirements. So we urge you to reject this recommendation and keep this funding going forward.

And I will say one more thing. I think with this funding we've really shown that we can help agencies improve and become more efficient with the dollars they use. The Emergency Solutions Grant funding that is received every year, there's an application process, and in the Balance of State, the applications that were
submitted scored among the highest in the entire state, and I think that is in large part due to our staff's efforts, and this funding helps with those staff efforts. So we'd like to thank you for the opportunity to serve Texas and we'd like to continue that and urge you to reject this recommendation to eliminate funding.

MR. OXER: Good. Thanks for your comments, Mr. Samuels.

Next.

MR. FLOYD: Hi. My name is Beaman Floyd. I'm appearing on behalf of Texas Habitat for Humanity of which I'm a board member.

We wanted to bring to your attention the Bootstrap Program. This is the owner-build program that you all administer under Section 2306.753. Frankly, we're very understanding of and sympathetic to the budget pressure you are under. We live in the state and we know what's going on with the budget and with the revenue estimates as we move toward the legislative session. We think that the Bootstrap Program is an excellent program and we think it should be supported. Frankly, we'd like more money to go into it. It's really not an expenditure, it's a true investment program because once the money goes into it, it stays in it and comes back with interest.

Our best world would be for you all to ask for
additional funding into the Bootstrap Program. We haven't had additional funding for quite some time, and the world, as all of you all know very well, has moved on in terms of housing values and the price of land, et cetera. However, we also understand the constraints under which you operate. We just wanted to let you know where we are on this, urge you to consider this thing, and let you know that we will continue to work directly with the legislature to educate them on the Bootstrap Program, and look forward to working with you in partnership on that as we move toward the appropriation process.

I have a letter that says essentially that thing here that I'd like to enter into the record, if that's all right. And that is that.

MR. OXER: We can't enter the letter into the record, as chair I can't allow you to do that, but you're welcome to send that to the agency.

MR. FLOYD: I will provide the letter to the agency.

MR. OXER: That will be fine. Thanks for your comments.

MR. FLOYD: Perfect. Thank you very much. Appreciate it.

MR. OXER: And I would remind everybody to make sure that you sign in, so that Nancy can identify you.
MR. DUNCAN: Good morning, Board. Good morning, Tim. My name is Charlie Duncan. I'm with the Texas Low Income Housing Information Service.

I heard Mr. Lyttle recommend the complete dissolution of the affordable housing information program. I find this is troubling, given the pressures and opposition that affordable housing is facing today. That opposition is growing, it is based on misperceptions and I think a lack of understanding and education about what affordable housing is. This program should definitely not be cut but should be funded and utilized by this agency.

Without the public understanding what affordable housing is, what it means to their communities, what it means to the state, this problem is not going to get any better.

I oppose this recommendation and I hope that the Board and the agency will reconsider ways in which to meet the governor's request of a 4 percent budget cut. Thank you.

MR. OXER: Thanks for your comments, Charlie. Are there any questions from the Board?

DR. MUÑOZ: Michael, I have a question. In our administrator's statement, just so I'm understanding this correctly, it says $63,000 for HTF and HHSP over the biennium. Is that $63,000 per program or $63,000 divided by two?
MR. LYTTLE: Per program.

DR. MUÑOZ: So about $30,000 per program annually reduction?

MR. LYTTLE: It's $63,000 per program over the biennium.

MR. OXER: Over the biennium.

MR. LYTTLE: So technically $30,000 per year.

DR. MUÑOZ: That's what I said.

MR. LYTTLE: Sorry. Yes.

DR. MUÑOZ: And then explain to me the 10 percent scheduled reduction. I read the June 30 letter from the governor, lieutenant governor and speaker. I don't see that referenced.

MR. LYTTLE: In direct communications that we've had with the Legislative Budget Board and with the Governor's Office, actually over the last several sessions, this has sort of been a general practice that agencies have gone through to look at additional 10 percent reductions in case it's needed, so it's more of a precautionary measure at this point in time.

DR. MUÑOZ: That's what I thought, but $30,000 per program annually is probably survivable, $1.2 million, is that what would happen, these two programs would be primarily responsible for that 10 percent?

MR. LYTTLE: If we had to cut an additional 10
percent, yes.

MR. OXER: So the 10 percent, there was a mandate to cut the 4 percent and then think about how you would cut another 10 percent if things really went downhill.

MR. LYTTLE: That's correct.

MR. OXER: Okay.

DR. MUÑOZ: And I understand that. The HHSP program, what's the budget for that, all in? Is that it?

MR. LYTTLE: I don't remember the exact funding total we get for HHSP. Is it $3 million, five?

DR. MUÑOZ: About five?

MR. LYTTLE: Five million a year for HHSP, and it goes to the eight largest cities in the state for homeless programs.

DR. MUÑOZ: We just had a presentation about two meetings ago, right, about teen homelessness. Everybody was very compelled.

MR. LYTTLE: It's tough. I mean, we're cutting bone here, really.

DR. MUÑOZ: And I appreciate you aren't necessarily the one with the cleaver. Right? I'm just asking you.

MR. LYTTLE: With Tim and with senior staff and David Cervantes with the financial area, we've all looked
at it really, really closely and came up with different options, and we felt like this was the most reasonable one.

DR. MUÑOZ: I'm not prepared to sort of filibuster this too much longer, but I mean, $63,000 over the biennium, I think, with the $5 million budget, $30,000 a year, right, you could probably still provide a lot of service. $1.2 million cut out of a $5 million budget is a different matter. Hopefully the 10 percent contingency is not required, but should it be invoked later on, I suppose this is me telegraphing I might have something to say about it.

MR. OXER: Might? We expect you to say things about it, that's okay.

Well, anybody that has to deal with the legislature and with state government recognizes that we're not in a period of rising revenue. I think there are plenty of people here today that could help us confirm that, so we've got to be prepared to deal with it. So the question comes down to a matter of the choices that we, the Board, has to make to confirm what the staff has made.

Tim, did you have a comment that you want to make?

MR. IRVINE: I was just going to say that we all hope that none of these cuts come to pass, and
consistent with the gentleman from Habitat, we work to educate our oversight committees and members of the legislature about the impactfulness, and frankly, the benefit to communities of all the programs that we run, but we're faced with the challenge of at least devising potential cuts and we wanted to prioritize basically cutting actual programmatic services as the very last option.

MR. GOODWIN: Would we have a chance to revisit this if the 10 percent was mandated?

MR. OXER: If that's invoked

MR. GOODWIN: If we vote today and the 10 percent gets invoked, will it come in front of us again?

MR. IRVINE: I think any time you submit anything in the legislative budgeting process, there is the possibility that you've lost control over it, but we're always in dialogue with our LBB folks and our Governor's Office folks, and to the extent that we see ways to improve it, they're always willing to talk with us.

MR. OXER: Well, with respect to the concept of control over a budget, I don't think we ever have any real control, it's more like influence. We were hoping somebody would listen to us, but when it gets down to it, somebody else has got to decide how much we get.
MR. IRVINE: And I would also say that we do offer other programs that are federally funded that can serve different aspects of some of these hard-to-serve populations, such as the Community Services Block Grant, the Emergency Solutions Grant, and we can look for ways to maximize their ability to complement areas that undergo reductions, but those do have federal limitations.

DR. MUÑOZ: And I appreciate the explanation and the clarity. Again, you have to present this possible financial sort of solution if it's required. Should it be required, there may be other programs that help offset or mitigate the impact to those programs that would be materially impacted by what we recommend to the legislature. However, they're looking for reduction, we're the ones identifying the programs, and should it come to pass, and hopefully it won't, maybe some additional discussion could be had.

MR. OXER: Any other questions?

(No response.)

MR. OXER: Motion by Ms. Bingham, second by Mr. Goodwin to approve staff recommendation on item 3, and then public comment. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)
MR. OXER: There are none. It's unanimous.

Chairman Dutton, good morning. We'd like to extend to you a courtesy since you're here and I understand you have a comment to make on an item that's sort out of sequence here, but we'd like to offer you the opportunity to speak.

MR. DUTTON: Well, good morning, Mr. Chairman and members. Thank you. I do have a plane to catch too.

MR. OXER: And I hope you'll forgive me for having to do this, but you have to tell us who you are.

MR. DUTTON: I'm State Representative Harold Dutton, from Legislative District 142 which is in Northeast Houston.

MR. OXER: Great. Thank you, sir.

MR. DUTTON: I am currently serving my 16th term in the legislature, and during that time I've had the pleasure to support affordable housing, and particularly housing financed through the Low Income Housing Tax Credit Program, and I want to thank you all for all of the work that you do to make that possible. And certainly in my district in Houston, where we have probably a population of renters that borders closer to 46-47 percent, affordable housing is always important to us, and we're going through somewhat of a re-gentrification that's taking place now, and so we'll be having some efforts
during the next legislative session to try to improve that.

I just wanted to appear this morning, though. I'm not sure vilified is the right word --

MR. OXER: That's what we usually get, by the way.

(General laughter.)

MR. DUTTON: And after 16 sessions in the legislature, I'm accustomed.

MR. OXER: Your hide has gotten a little tough on that side.

MR. DUTTON: Well, you start to recognize that you have to explain to people in my district that beating up on me is nonproductive and that if we can get to the root of the problem perhaps we can solve it, but in no way beating up on me or me beating up on them is going to rectify whatever the problem is.

I did want to just share a couple of things in terms of this application I think that's come from the Fall Creek, related to Fall Creek. One of the things I've always done -- and I think this is the first time in my career I the legislature -- we always ask two questions of people who ask us to involve ourselves in writing letters of support. One is we always ask about this idea of whether or not ex-felons are going to be permitted in
terms of the application to be a part of the process, and in most cases we've found that to be successful. In fact, on one occasion we had to work with the developer who didn't understand what the law was or what I was even asking, but we were able to resolve that. The other is that we always ask whether or not the applicant has talked to the people within the respective community to be sure that we don't have any upsets down the road.

And in the case of Fall Creek, we asked those two questions -- I didn't personally but my staff did -- and we were assured that, number one, in terms of the ex-felons they changed their whole policy and said they would agree to look at it on a case-by-case basis. When it came to community support, we were assured that the people in Fall Creek community, which is a little bit outside of where this development is, but certainly that they had been talked to and that they were in support of it.

It turns out later that we were advised that that was not the case and as a result of that, what I did is tried to host a meeting with the people in Fall Creek and the developer. Unfortunately, the developer was not able to attend for whatever reason, and so we went ahead with the meeting. But it now has developed into a question of whether or not there was any fraud involved, and I understand the staff's position that they are not
convinced that there was any fraud involved, and that's a little bit different than my opinion because I believe that my support for the project was based solely on those two questions that we asked and were answered in the affirmative, at least for us to do.

I understand also there's been I this round probably 141 applications that you also have had this time. Six of those applications, I think, are applications that did not meet the financial deadline, for whatever reason, and I think as long as you all are considering how to treat those, I think you ought to apply the same standard to them as you apply to everybody else. If they did not meet the standards, then they shouldn't be allowed to continue.

And so I'm just here to suggest that, one, my staff tells me that they feel a little bit maligned, too, themselves because in some cases people have suggested that they were not telling the whole truth or at least not according to some of the people who objected to my wanting to withdraw my letter of support for this project, because as you know, the way it works is that one a legislator submits a letter, we typically don't get an opportunity to withdraw it. I think when there's clearly evidence of fraud, I believe that ought to be a consideration that falls outside of the rule barring the withdrawal of a
letter, but in this case there's some other evidence that this applicant obviously didn't meet.

There are people who are suggesting that I'm sort of kowtowing to the wills of the people in Fall Creek. I can tell you that while I do consider what these folks have had to say, in no way have I ever stood in the way of an affordable housing project simply because the people have expressed this not in my backyard sort of an approach. And there are people who have suggested that, well, he's doing that so he can make sure he gets elected. Well, after 16 terms, I don't worry too much about getting reelected because I do recognize that I have probably more terms in back of me than I have in front of me, anyway.

But again, I just want to thank you all for allowing me to vent a little bit this morning because my staff was a little bit upset because I was upset at them because all these things seemed to get out of kilter. But I'll be happy to answer any questions. I don't want to take any more of your time, but I do think that a consideration ought to be made for when applicants make application that there's a checklist you go down, and if you don't meet all of the things on the checklist, you've got to get out and start over, and I think that's what happened in this case with the Fall Creek development.
folks.

So again, thank you, Mr. Chairman. I got a new flight, that's what it was just telling me. I don't have to worry about it, I do have a new flight.

(General laughter.)

MR. OXER: We're only laughing because we know what that feels like.

MR. DUTTON: I understand.

So anyway, I'll be happy to answer any questions, Mr. Chairman, if you all have any for me at this time, but other than that, I'll get out of your way and let you go on and conduct your business. And again, thank you all for what you do for Texas. We still don't have enough in the way of affordable housing and I don't know that we'll ever get to that point, but I do think that we've got to make the effort. And I think people are becoming more and more accessible when it comes to changing their minds and their thoughts about these affordable housing projects, and I'll stand with you to do everything I can to make sure that that happens.

So with that, Mr. Chairman, if you have any questions, I'll be happy to answer any of them.

MR. OXER: Thank you for your comments, Mr. Chairman. As I commented to several folks like you who have come here, we're going to constantly be in a state of
catching up in terms of providing this, so there's always
going to be more demand, more need than we'll be able to
satisfy each time the opportunity presents itself, but
it's a state of evolution, we have to keep chasing that
flag even if it's tied to a stick on us

Are there any questions from the Board?

MR. GOODWIN: I have a question.

MR. OXER: Yes, Mr. Goodwin.

MR. GOODWIN: Chairman Dutton, you made
reference to the fact that your staff asked this developer
if he had met with the local community people, and they
stated to your staff that they had, and then you attempted
to arrange a meeting between that group of people and the
developer and the developer didn't show for whatever
reason.

MR. DUTTON: Well, there was another step that
I think you missed in there, and I probably didn't mention
it, but one of the reasons we arranged the meeting was
because there was this dissension about what was said and
who said it and that kind of thing, and so I wanted to get
the parties together so that we could sort of ferret out
the truth to be sure that we were all on the same page.
And that was the reason for the meeting.

MR. GOODWIN: And I just want to make sure that
I'm clear. I assume this meeting would have taken place
after your letter of support for this project had already
been submitted to the Department.

MR. DUTTON: That's exactly right.

MR. OXER: And at what point in the schedule
before or after the compliance date? Meaning if you
submit a letter, there's a date after which the
application is either in or it's out.

MR. DUTTON: Well, I'm not sure about the dates
on that, I'd have to look back at my notes, but I think it
came after. I believe the meeting was after. I believe
that, I'm not absolutely 100 percent certain, but I
believe that to be the case.

But again, my whole point of having a meeting
was to get everybody together because I never had this
happen before where we had offered a support letter and
then somebody said, Well, the basis for your support
letter was not absolutely correct. And I thought, Well,
wait a minute, why are you saying that? But anyway, let's
get everybody together and get the parties together and
we'll see. To the developer's credit, they did call and I
think the statement was made to my staff that there was
bad weather or something and they couldn't come or
something. But nonetheless, that was the purpose for the
meeting.

MR. GOODWIN: And had they told your staff
originally that they had not met with the Fall Creek Homeowners Association, you would have said?

MR. DUTTON: Go meet with them and come back to us, the same as we did when we talked to them about ex-felons. Apparently they were not quite ready to make the commitment to us to do it on a case-by-case basis, and in fact, what the developer's representative said was: Let me go back and talk to these folks and then we'll come back to you with what our position is. They did that in terms of the ex-felons proposition, and if it had surfaced that they had not met with the people in Fall Creek, we would have simply said, Why don't you meet with them? In fact, I would have been glad to host a meeting for them with these folks so that they understand kind of what's going on, what's going to take place, how potentially it might affect them, if any at all, but just so that people would be talking so that nobody would be afraid of things for reasons that weren't credible reasons to be afraid of. And I think that's what, in part, happened.

MR. GOODWIN: Thank you.

DR. MUÑOZ: Chairman Dutton, I just want to be clear. So this is the first time that this has happened where you've had to speak about a letter of support in 16 sessions?
MR. DUTTON: Never happened before, sir. In fact, almost every time we have done it, I think the record will reflect, things have been fine. And there are times when we've actually met with the community to kind of help them understand what was going on, and things tend to work better when we were talking. But this is the first time this particular situation has arisen.

DR. MUÑOZ: In my notes I thought I jotted down, did you indicate that they also may have changed their position on the felon?

MR. DUTTON: Well, yes. When we first met with them, when my staff first met with them, I was advised that they said, well, they weren't going to consider ex-felons at all. And I said, Well, you can't do that is the way I understand the law. But the gentleman who was representing the developer said, well, he needed to get back to the developers to kind of ferret out what their position might be. And we later got a call saying that they would look at it on a case-by-case basis when it came to ex-felons.

DR. MUÑOZ: And knowing what you know now, I just want to be clear, would you have provided that letter of support?

MR. DUTTON: Absolutely not.

MR. OXER: No other questions? Thank you,
Chairman Dutton.

MR. DUTTON: Mr. Chairman, thank you all, and thank you again for all of the work that you all do to help Texas get out of this affordable housing crisis.

MR. OXER: We appreciate your comments and glad to have you here today.

All right. I will remind everybody this was a diversion from the agenda to provide a courtesy to the representative, and that information is on the record from Chairman Dutton to be considered under item 6(a).

With respect to item 4 on the action items, Raquel. Good morning.

MS. MORALES: Good morning. Raquel Morales, director of Asset Management.

Item 4 i: Presentation, discussion and possible action regarding a material amendment and a waiver request for Altura Heights which is Tax Credit number 15306.

Altura Heights was awarded last year during the competitive cycle. The applicant was awarded 9 percent housing tax credits and a TCAP direct loan and proposed the new construction of 124 units in Houston. An amendment request was submitted identifying changes to the application which triggered material alterations and requiring Board approval, among those being a change in the site plan, reduction in the number of residential
buildings, there's also an increase in the net rentable area due to slightly larger unit sizes and a larger common area. Additionally, the applicant provided revised financial exhibits reflecting increased development costs and a slightly different financing structure than what was originally proposed and approved.

The applicant has established that these changes were the result of working with local neighborhood groups in the area to design a project that would fit better within the established neighborhood. As a result of that work with the neighborhoods, as well as some changes to the site related to needing a larger retention pond to service the development, the site plan had to be modified and resulted in needing to reduce the buildings from eleven to ten. The total number of units and the unit mix remain the same, that hasn't changed.

The Department's Real Estate Analysis Division has performed a reevaluation of the revised information provided and confirms that the development remains financially feasible. Your Board materials include the REA addendum related to this amendment which continues to recommend the previously awarded tax credit amount and the TCAP direct loan, subject to conditions.

So that piece just kind of summarizes the amendments that they're asking approval for and that staff
is recommending approval for.

The second part of the applicant's request is related to a waiver, and this is specific to a waiver of the Department's definition of unit type under 10 TAC 10.3(a)(139). So during staff's review of the revised information which included revised floor plans for the units and the building plans, it was revealed that the development, as it is currently designed and proposed now, does not achieve the required distribution of accessible units among unit types. And this is specific to the two-bedroom, two-and-a-half bath townhome units. The applicant believes that the distribution is achieved as currently designed, if the two-bedroom, two-and-a-half bath townhomes are considered the same unit type as a two-bedroom, two-bath townhome.

The Department's definition of unit type considers a unit to be a different type if there is any variation in the number of bedrooms, bathrooms or if the square footage difference is equal to more than 120 square feet. Multifamily developments have to comply with the accessibility rules in Chapter 1, Subchapter B, and these rules describe and expand upon the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act.

Now, 10 TAC 1.207 states that accessible units
must be made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities as, as a whole, comparable to that of other persons eligible for housing assistance under the same program. 10 TAC 1.207 goes on to give examples of distribution requirements based on bedroom and bathroom, as does the definition of unit type in our rules.

As the Board writeup states, this is a new construction project that has not yet started construction, it's still within the design phase, and throughout the process of reviewing the amendments, staff has discussed with the applicant alternative ways to fix the problem, in essence, to meet the accessibility, the distribution requirements for these units. However, the applicant has indicated that those alternatives are either not feasible financially, it would be too costly, or they were impractical for the plans the way they're designed now.

The rule requires a sufficient range of sizes and amenities and so ultimately the Board's decision or question here is whether the lack of a half bathroom is limiting a person's choices. Is a two-bedroom, two-and-a-half bath unit the same unit type as a two-bedroom, two-bath unit?
Staff, again, is recommending approval of the amendment with respect to the changes to the site plan and all the other stuff, but as it relates to the waiver, staff is not recommending approval of the waiver.

MR. OXER: Any questions? So a half bathroom makes that much difference?

MS. MORALES: Yes. Apparently it does, yes. Our Compliance Division has traditionally applied and interpreted as constituting a different unit type, and that's the question: does the half bathroom make it a different unit type?

MR. ECCLES: Question, Raquel. The facts in this application, though, is the difference between a half bathroom on the ground floor of a townhouse, a two-story townhouse, versus a two/two flat for the accessible units. So the question then also becomes whether a half bathroom is an amenity both in the flat and in the townhouse.

MS. MORALES: And in the townhome.

MR. OXER: So essentially, the townhomes had two and two upstairs, two bedrooms, two baths upstairs, and whatever, the kitchen and the rest of the place is on the bottom, plus the half bath on the bottom.

MS. MORALES: Right.

MR. OXER: And then the flat has got the two and two all on the same level. So essentially the half
bathroom on the ground floor makes it more accessible for somebody who might need that accessibility to keep from having to go up and down the stairs.

MS. MORALES: That's the question. Right now the two-bedroom, two-and-a-half-bath townhome units, none of those are accessible, and that's the question. That's what staff has gone back to the applicant and said is, you that don't have an accessible unit for that floor plan.

MR. OXER: Hold on a second. A two-bedroom, 2-1/2-bath townhome is not accessible. What was the thinking in terms of what would make it accessible?

MS. MORALES: Well, there were several different options that we presented to the applicant, and they're included in the Board writeup. One of them would be for the two-bedroom, two-bath flat that is of comparable size to add a half bath in that unit. Another would have been to include a lift in one of the two-bedroom, two-and-a-half-bath townhomes to make it accessible. That was another option that was thrown out.

MR. OXER: So essentially put in an elevator. Yes or no?

MS. MORALES: Yes. Not an elevator, it's a chair lift.

MR. OXER: Okay. It's a rail lift up the stairs.
MS. MORALES: Yes.

MR. OXER: Okay.

MS. MORALES: The other option was to remove the half bath from those units and essentially make them two-bedroom, two-bath townhome units, which they already have and just removing the half-bath floor plan.

MR. OXER: Which seems like sort of a courteous amenity to have on the first floor.

MS. MORALES: That's what the applicant is saying, is that it's there for visitors who don't have to go upstairs to use the bathroom.

MR. OXER: Okay.

MR. ECCLES: Just for clarification purposes, for the development, the accessibility element is managed by having the flats. Correct?

MS. MORALES: Yes.

MR. ECCLES: And then it's not about making the townhomes accessible, the powder room in the townhomes on the first floor is more an issue of visibility rather than accessibility.

MS. MORALES: Yes.

MR. ECCLES: Okay. Thank you.

MR. OXER: Hold on. Clarify that for me. I admit I'm having some trouble with this one.

MR. IRVINE: A person with a mobility
impairment who visits can use the restroom on the ground floor and doesn't need to be able to access the second floor; however, if a person were mobility impaired and living in the unit, they would not have access to a full bathroom on the ground floor.

MR. OXER: Right. And that seems to make sense. But the accessibility argument in terms of making those arguments, wouldn't you offer them the ones in the two-bedroom flats?

MR. GOODWIN: Do you have an accessible number of units we're trying to get to and that they need to count these to get to that number of units within the entire development?

MS. MORALES: They already do, so there's 124 units, they need 5 percent overall, so they need, I think, it's about seven units, and they do have that number of accessible units. The question is the distribution among each unit type. So you have to have the seven spread out among the one-bedrooms, the two-bedrooms and the three-bedrooms, and the issue here is that there are two-bedrooms with 2-1/2 baths that are considered different than a two-bedroom, two-bath. The applicant is saying those are the same unit type and should be counted as one unit type, and that is the question that's before you to decide.
MR. GOODWIN: So if you took this powder room and just made it into a closet within this development.

MS. MORALES: Then it would just be a two-bedroom, two-bath.

MR. GOODWIN: And everything else about the application is approved.

MS. MORALES: Yes.

MR. OXER: Well, the question is for the accessible units within the development they've met what the required standard is in terms of number. Now it's a question of the two-bedroom townhouse and the two-bedroom flats.

MS. MORALES: It's a question of distribution. Again, we can't have all the accessible units being just the one-bedroom units. Right? If they offering ones, twos and threes, we want them equally distributed among the development.

MR. OXER: And the critical part you just said was it has to be distributed between the one-, two- and three-bedrooms, not the one-bedroom; two-bedroom, two-bath; two-bedroom, two-and-a-half bath; and three-bedroom.

MS. MORALES: Well, right, there's the question, because our rule, our definition of unit type is specific. It doesn't address the half bathroom.

MR. OXER: It's a difference without a
distinction, as far as I can tell.

DR. MUÑOZ: So if they are required approximately seven of these units across the entire development and they have three model types, one-bedroom, two-bedroom, three-bedroom?

MS. MORALES: Yes, I think so.

DR. MUÑOZ: So they should have two of each, about.

MS. MORALES: They have ones, twos and threes, and they have right now three of the one-bedrooms proposed as accessible, they have one of the smaller two-bedroom, two-bath flats proposed as accessible, and they have two of the two-bedroom, two-bath flats accessible, and then they have one three-bedroom as accessible. So again, the question being the two-and-a-half bath, is that limiting choice. If we're saying the two-bedroom, two-and-a-half bath is the same unit type and they don't have one of those as accessible, is that limiting somebody's choice as far as the half bathroom goes.

MR. OXER: The real question is is a two-bedroom different from a two-bedroom with a half bath; a two/two and half, different from a two/two.

Any other questions from the Board?

MS. BINGHAM ESCAREÑO: Just a point of clarification because I didn't hear an answer.
MS. MORALES: Yes.

MR. OXER: Thank you, Ms. Bingham.

Okay. So restate for us, you've taken care of all of the changes in the number and that sort of thing, and it's down to whether they need -- I gather that they think they don't need an appeal and you think that they do.

MS. MORALES: Well, they did submit a request for a waiver. After discussion with staff, they thought, okay, let's take this and ask the Board to waive the definition of unit type. Now, whether a waiver is what's really needed or if it's a clarification.

MR. OXER: So what we would be waiving is whether we think a two-bedroom, two-bath flat is a different type of unit from a two-bedroom, two-and-a-half bath townhome.

MS. MORALES: Yes.

MR. OXER: Space is essentially the same on each one of them, one has just got another half bath in it and they've got the bedrooms on top. And the number of units that are accessible within the whole complex is still the same.

MS. MORALES: Yes.

MS. BINGHAM ESCAREÑO: Can I just ask one more question just for clarification?
MR. OXER: You can ask as many as you like

MS. BINGHAM ESCAREÑO: The waiver is actually
to allow the two-bedroom, two-bath flat to satisfy the
distribution requirement.

MR. OXER: I'm sorry. The way I read it is
you're saying the waiver is to say that the two-bedroom,
two-bath flat is essentially the same as a two-bedroom,
two-and-a-half bath.

MS. MORALES: Yes.

MS. BINGHAM ESCAREÑO: I can live with that.

MS. MORALES: And that what they've proposed is
good and they can move forward.

DR. MUÑOZ: That they're equivalent.

MS. MORALES: That they're same unit type.

MR. OXER: And you're saying that it's not, and
what we would have to do is say that it is.

MS. MORALES: Yes.

MR. OXER: Is that clear to everybody? Do we
need to take this in two parts, Counselor, to approve the
recommendation on the changes? Well, they didn't request
an appeal on that, so the real question on this is this is
the only item.

MS. MORALES: Right. It's just that in
conjunction with this whole amendment, the changes that
they presented, this was identified as an additional issue
that staff couldn't get comfortable with based on how we've interpreted historically.

MR. OXER: So staff is saying that?

MS. MORALES: So staff is saying we approve the material changes that have been presented and believe that the development needs to meet our accessibility requirements, and as it relates to this one piece, the two and a half bathroom townhome issue, we don't recommend the waiver on that. We're saying move forward, make the development accessible; you're at a stage where you can, you haven't started construction, you're still in design phase.

MR. OXER: Do you want to take a stab at that one?

MS. BINGHAM ESCAREÑO: I would, I'd like to take a stab at it.

MR. OXER: Please.

MS. BINGHAM ESCAREÑO: I'd like to recommend approval of staff recommendation with the exception of the denial of the waiver for which I would like to move to approve the waiver request.

MR. GOODWIN: Second.

MR. OXER: Okay. Motion by Ms. Bingham, second by Mr. Goodwin to as stated approve staff recommendations with the exception of the waiver.
MR. ECCLES: If I could make a suggestion on the motion.

MR. OXER: Please.

MR. ECCLES: Waiver of 10 TAC 10.3(a)(139), Unit Type, as it relates specifically to the facts in this application that is before the Board. This is not a general waiver of unit type as might be applied under other circumstances.

MR. OXER: Correct. Ms. Bingham, I assume you're okay?

MS. BINGHAM ESCAREÑO: Incorporate Legal's suggestion.

MR. OXER: Okay. Mr. Goodwin, I assume that's okay?

MR. GOODWIN: Acceptable.

MR. OXER: All right. We appear to have public comment. You sure you want to say anything?

MS. McIVER: I'm Diana McIver, DMA Development. I think you have a busy day.

MR. OXER: Welcome back. We haven't seen you for a while.

MS. McIVER: I know. And we're here to answer any questions but it sounds like staff sufficiently answered those questions. And yes, we just believe that what we're proposing, the two-bedroom, two-bath flat is a
more usable unit type for a person with a disability and
that the extra powder room simply complicates the
usability of that space. And we did a little diagram for
you, but it sounds like we're all on the same page, so I
really don't want to take any more of your time. And I
thank you, though, for your support.

MR. OXER: Good thinking, Diana.

(General laughter.)

MR. OXER: With respect to item 4 of the
agenda, there's been a motion by Ms. Bingham, second by
Mr. Goodwin to approve staff recommendation on this item
with the exception of the waiver as defined by counsel.
Is that sufficiently stated, Counsel? Let the motion
reflect what was stated in the record. Is that clear to
the Board? Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

MS. MORALES: Thank you.

MR. OXER: Thanks, Raquel.

Michael.

MS. TREJO: Good morning. I'm standing in for
Michael today. Good morning, Board and Chairman Oxer. My
name is Naomi Trejo, coordinator for Homelessness Programs
and Policy, and I'm presenting on agenda item 5:
Presentation, discussion and possible action on timely
filed scoring appeals under the Department's 2016 ESG
Program NOFA. It should be noted that yesterday Mayor
Chris Watts of Denton submitted a letter of support for
the city of Denton's ESG application.
ESG funds are used for street outreach,
services, shelter and financial and mental assistance for
persons who are experiencing or at risk of homelessness.
In February 2016, the Department released an ESG NOFA for
$8.4 million. In the NOFA the Department funds by
Continuum of Care, or CoC regions, for competition by
local applicants.
As background, the CoC program is a HUD program
which provides funding for a system of community
homelessness providers. By statute, CoCs are responsible
for establishing a coordinated access system and ESG
subrecipients must interact with the CoC in its region.
The City of Denton is in the Balance of State CoC. For
the Balance of State CoC, the lead agency is the Texas
Homeless network.
This appeal concentrates on a scoring item in
the 2016 ESG competition. The Department asked CoC lead
agencies to verify participation of applicants in a
coordinated access system. The Department staff reached
out to the Texas Homeless Network this week and asked if they would reconsider their assessment of what constituted participation in the coordinated access system. The Texas Homeless Network declined reconsideration, therefore, staff recommends that the appeal be denied as this would be consistent with the treatment given other applicants.

Any questions?

MR. OXER: Okay. Any questions from the Board?

(No response.)

MR. OXER: Then we'll need a motion to consider.

MR. GOODWIN: So moved.

MR. OXER: Motion by Mr. Goodwin to approve staff recommendation on item 5.

DR. MUÑOZ: Second.

MR. OXER: And second by Dr. Muñoz.

Do you wish to speak, sir?

DR. PETERSON: My name is Dr. Alonso Peterson. I'm the executive director of Giving Hope, Incorporated. We provide a lot of the Emergency Solutions Grant support in the City of Denton. Each year we have been providing of the City of Denton about 1,500 people are served through ESG services, so those are seniors, domestic violence victims and clients with HIV or AIDS. Those are clients who are either assisted through street outreach,
the shelter operations or direct rental assistance. Each year we're looking at over $100,000 of rental assistance going to those clients. We then match those funds or leverage those funds through United Way to help out even further, so there's a lot of assistance being provided.

I'm speaking in support of our appeal because it comes down to about three points which we are lacking in the application and it's related to this coordinated entry process. Initially in Denton I was the original chair of the coordinated entry process in the city, and we have one partner in the community that's a domestic violence partner. That agency cannot participate in HMIS, so agency can't participate in that system based on federal law and that is a part of our appeal. That is two points alone in the application that we're missing.

Another city in our application is in the City of Lewisville, they're about 30 minutes away. So coordinated entry is about getting all the agencies together to refer clients back and forth to what's considered front doors. The City of Lewisville, they serve clients south of the lake, we serve clients north of the lake. Clients that are in Lewisville can't be referred to the City of Denton for services, so there's no way for those clients to access services in the City of Denton, thus they can't participate at this time in the
coordinated entry system.

So it really comes down to those two issues and those two issues make a difference in the lives of about 1,500 people in our community. So we're asking that the appeal be considered so that those clients can get the services they need.

MR. OXER: Thanks for your comments, Dr. Peterson.

Any questions?

MS. BINGHAM ESCAREÑO: Dr. Peterson, do those clients have any other alternatives for services other than what you've put together?

DR. PETERSON: Not at this time. Giving Hope in the City of Denton provides the majority of the rental assistance services in this county. So what's going to happen is if we lose these services, those clients will then have to call churches and other people in the community to get assistance, and our faith-based community just can't handle 1,500 people needing $100,000 in rental assistance, domestic violence clients needing counseling, and the shelters needing food and a place for the clients to speak.

MS. BINGHAM ESCAREÑO: I'm not asking you to speak, you're speaking on behalf of the City of Denton, but would your assumption be that the Lewisville clients
would have the same dilemma?

DR. PETERSON: The exact same dilemma.

DR. MUÑOZ: Dr. Peterson, when did you discover that the nature of some of your partners would be excluded by federal law? How wasn't that discovered in you due diligence up front? Now at this point you've submitted this app and have discovered that by virtue of some other statute it precludes you from receiving these points which we may not be in a position to change on our end.

DR. PETERSON: The way we considered it, when we have been working through the coordinated entry process was the fact because the domestic violence partner is aware of what is going on in the community and by federal statute they can't participate in HMIS, that that was participation. They're aware of what is going on in the community with the services. If any of their clients are needing services, we still service those clients, they just can't go into the HMIS system, so we saw that as participation.

Also, when we set up the original coordinated entry system in the community, we were advised to focus first on the City of Denton to establish that front door system where there are agencies in the community that everybody sends clients to, so some agencies refer clients and some agencies are the front doors that service the
clients. We were advised that because Lewisville is about 30 minutes away that Lewisville not be a part of that system at this time.

DR. MUÑOZ: Who advised you?

DR. PETERSON: The Texas Homeless Network, the staff member who came out to provide the original training on how to set up coordinated entry.

MR. OXER: Any other questions?

MS. BINGHAM ESCAREÑO: I have questions for staff.

MR. OXER: Ms. Bingham.

MS. BINGHAM ESCAREÑO: And maybe for legal counsel.

Thank you, Doctor.

Are there statutory implications if we consider the appeal? I'll do Naomi first.

MS. TREJO: I'm looking for legal counsel. I'm not aware of any statutory limitations of considering the appeal. I will let you know that there are other domestic violence providers that are facing the similar issue and some of them have dealt with it in different ways in order to integrate them into coordinated access.

MR. OXER: How have they dealt with it, Naomi? Give us an example.

MS. TREJO: City of Houston, they weren't part
of this competition but they are working on creating some
sort of referral system through their HMIS system, which
is Homeless Management Information System, that would
provide that referral. So they're actively working on
that now, even though the DV provider can't enter
information into the HMIS system.

MR. OXER: Okay. Any other questions? Leslie?

MS. BINGHAM ESCAREÑO: I'd like to hear from
Megan.

Thank you, Naomi.

MS. SYLVESTER: Megan Sylvester, Legal
Division.

I just want to make a point of clarification.
The person appealing is absolutely right, the DV providers
are barred from participating in HMIS, however,
coordinated access is not required to be done through
HMIS. That's a choice that the City of Denton and their
local Continuum of Care, and they're part of a larger
Balance of State Continuum of Care for HUD purposes, but
their local referral, that's a choice that they made to
put that system in HMIS. So I just wanted to clarify
that.

MR. OXER: Is that clear? Good.

Is there any other public comment?

(No response.)
MR. OXER: All right. With respect to item 5, motion by Mr. Goodwin, second by Dr. Muñoz to approve staff recommendation on item 5. Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

MR. OXER: I'm going to recommend right now that we take a brief break. We're getting ready to have some intense conversation, so it's 10:07, let's be back in our chairs here at 10:20, a brief little pit stop break, and we'll be right back.

(Whereupon, at 10:07 a.m., a brief recess was taken.)

MR. OXER: All right. Let's come to order, please.

Regarding item 6, Marni, I think you're up first.

MS. HOLLOWAY: Good morning, Chairman Oxer, members of the Board. My name is Marni Holloway. I'm the director of the Multifamily Finance Division.

Item 6(a) is: Report and possible action regarding third party requests for administrative deficiency. In this item staff is presenting, as directed by the Board during the June 30 meeting, a more in-depth
analysis of two specific applications in a manner that allows the Board to provide policy direction to staff regarding these matters.

You'll recall that Section 11.1(o) of the QAP allows unrelated persons or entities to bring new material information about an application to staff's attention a third party request for administrative deficiency. Staff examines those requests and considers whether they should be the subject of an administrative deficiency on that specific matter. Requesters must provide documentation of sufficient evidence that will substantiate the deficiency request.

To the extent that staff has addressed certain scoring matters through the administrative deficiency process, statute at 2306.6715(b) provides that a decision under 2306.6710, which is scoring, may not be appealed by another applicant. Staff believes that issues relating to financial feasibility points are such matters.

As regards the way staff has utilized the administrative deficiency process to address other issues, we believe we have acted in accordance with both the letter and the spirit of the administrative deficiency rules. If the Board has any concerns over any of these practices, staff would appreciate your direction as we're developing the 2017 rules if we need to make any changes.
This item is posted on the agenda as a report with possible action. The Board may make the determination that staff has erred in application of the rule with regard to specific elements addressed in the report, and may take action by moving to revise or overrule staff's determination, or direct staff to adjust scoring or eligibility in a consistent manner for all applications with similar conditions.

So the first application, number 16118 The Standard on the Creek, we have four questions regarding this application. One of them regards payment of the full correct application fee at the time of application. When staff identified that there was a concern regarding the application fee that was paid, we contacted the applicant. They immediately the next day paid the $100 balance under protest. They believed that that amount was not due. And in past years, minor errors in fee calculations were accommodated in a similar fashion. No extensive review or reevaluation was necessary and staff believes that this error was appropriately handled.

The Board should be aware that a reversal of staff determination on this matter would result in the termination of the application and will impact five additional applications in the current round with similar issues.
The second question is whether the letter from
the applicant's lender contained the required elements to
support the full amount of points awarded under financial
feasibility. This is a scoring item under 2306.710. The
financial feasibility rule provides 16 points if the
lender confirms they have reviewed the development and 18
points if they confirm they have also reviewed the
principals. The applicant claimed 18 points in the
application but the letter did not address the review of
the principals. Staff believes that this indicated an
inconsistency in the application that required
clarification. This is precisely the kind of situation
that the administrative deficiency process addresses.

MR. OXER: Take your time.

MS. HOLLOWAY: I'm sorry?

MR. OXER: Take your time. Deep breath.

MS. HOLLOWAY: I'm like wow. I'm feeling it,
my ears are burning.

MR. OXER: Can you feel the heat over there on
the side?

(General laughter.)

MS. HOLLOWAY: Staff has received additional
information from the requester.

MR. OXER: Are you getting blistered over on
that side?
MS. HOLLOWAY: I am.

Staff has received additional information from the requester regarding this issue which has been added to the documentation for this meeting out of an abundance of caution. We had requested the basis for inclusion given that the applicant may not appeal a competitor's application. That question was not answered. We've gone ahead and included it in your book just to make sure that it's there for you. This new letter did not provide any new information, it reiterated the former position, and has not changed staff's determination that no further action is recommended on this item.

The third question is whether the applicant made intentional material misstatements or omissions to the office of Chairman Dutton in securing his letter of support. Chairman Dutton addressed you earlier today and provided his position and his thoughts on the matter. We have spoken with Chairman Dutton's staff and with the applicant regarding the meeting in question and have not been able to come to a determination on this matter. So staff in our considerations and our conversations have not come to a different conclusion.

Since the last Board meeting, a member of the Fall Creek Homeowners Association has raised a question regarding pipelines on or near the proposed site. We have
determined that the pipelines in the easement to the south of the property are not a violation of Department rules. The mapping indicates there may be a pipeline going through the property. The development to the west of this site does not indicate that there's an easement there, so we don't know if it's an inactive pipeline or if the mapping is in error. This is something that we've asked the environmental site assessment provider to review to make sure that that pipeline is not an issue.

Do you have any questions?

MR. OXER: Is there any questions from the Board?

MS. BINGHAM ESCAREÑO: Yes. I have a question.

MR. OXER: Ms. Bingham.

MS. BINGHAM ESCAREÑO: Let's go back to point one. So you mentioned this is the question about the application fee and the $100.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: You said that staff has handled similar issues in the past the same way.

MS. HOLLOWAY: It's my understanding -- and of course, I wasn't there for it -- the example that I was made aware of is that last year an applicant paid less on one application than they should have and more on another and they were allowed just to move the funds from one
application to another. So that was the example that I was provided with from the past.

MS. BINGHAM ESCAREÑO: And is that the similar situation for this one?

MS. HOLLOWAY: In this situation, the applicant calculated fees at $30 per unit and then subtracted what they had paid at pre-application which is a $10 per unit charge, but their unit count changed. So rather than paying $20 per unit on the full application, they were paying $30 less what had been paid at pre-app, so they wound up with this $100 shortage.

MS. BINGHAM ESCAREÑO: And then you also mentioned that there were a handful of other applications that you treated similarly in this round where there were what staff would defined as minor?

MS. HOLLOWAY: There are six applications in this round that had that very same issue.

MS. BINGHAM ESCAREÑO: That very same issue.

MS. HOLLOWAY: Very same issue.

MS. BINGHAM ESCAREÑO: And we treated it the same?

MS. HOLLOWAY: Exactly the same for all of them.

MR. OXER: So it was $100 out of a total of what?
MS. HOLLOWAY: A couple thousand.

MR. OXER: So incremental at best.

MS. HOLLOWAY: Yes.

MS. BINGHAM ESCAREÑO: Mr. Chair, just another question just for clarification. So on point 2, the 16 or 18, just remind me where did staff end up resting on that. They handled through administrative deficiency.

MS. HOLLOWAY: So that one is kind of interesting. We had already identified the issue with the application and had issued an administrative deficiency to the applicant saying all these parts and pieces are here but this isn't making sense. This is how we generally deal with missing parts that we need in order to fully evaluate that don't trigger a complete reevaluation. So we had already handled that issue.

Because all of the applications this year are online real time, everyone out there is watching what we're doing with deficiencies. The third party administrative deficiency request we received for this issue was about how we handled it. It was not bringing new information to our attention, it was about how we handled the issue. We actually received that request and the first time around said, Wait a minute, this isn't a third party. The requester said, No, I believe it is, go ahead and put it through the process.
MS. BINGHAM ESCAREÑO: And so aside from the third party requester, the applicant satisfied staff's questions relative to the original administrative deficiency.

MS. HOLLOWAY: Yes. We had, in fact, accepted their response to the administrative deficiency.

MS. BINGHAM ESCAREÑO: I don't have any other questions.

MR. OXER: Okay. Thank you, Ms. Bingham.

Any questions from you guys?

(No response.)

MR. OXER: Okay. Essentially, this matter has been received by staff, dealt with, and because there were some questions associated with it last time, we asked for further information.

MS. HOLLOWAY: Yes.

MR. OXER: Sounds like it's an opportunity for the Board to exercise its prerogative to perhaps confirm or reopen the decision that was made by staff, but at this point staff asks for no action.

MS. HOLLOWAY: Staff recommends no further action on these items. Of course, the Board has the option to direct us to handle these items differently or to provide us with policy guidance moving forward. If we how we are handling these matters is not the way that the
Board thinks it should be done in the future, if we're looking at a rule change, we certainly would welcome that direction and assistance.

MR. OXER: Well, we're always looking for opportunities to iron out quirks and chase these little rascals away from our QAP, but that's part of the process.

MS. HOLLOWAY: Yes.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: Just on the point three about the material misstatement and omissions, you were here earlier.

MS. HOLLOWAY: Yes.

DR. MUÑOZ: You heard the chairman.

MS. HOLLOWAY: Yes.

DR. MUÑOZ: Anything that he said changes your position on some of what's represented under item three?

MS. HOLLOWAY: So the information that Chairman Dutton shared with you was not new to the questions that have come up on this application, and in fact, echo communications we've received in letters from Chairman Dutton. There are several of them, and then, of course, there was the letter that was read into the record at the last meeting.

In the interim between the June 30 meeting and today, actually, it was Michael and I sat down and called
Chairman Dutton's staff and asked them a series of questions. We also talked with the applicant, called the applicant and asked them a series of questions regarding that meeting in question and regarding the support issue.

And based on those conversations, information that we've received from Chairman Dutton, information we've received from the applicant, there's even in your book a copy of Chairman Dutton's chief of staff's notes from that meeting, we haven't been able to come to a conclusion that we can point either way on this issue. We're not finding a material omission. We certain are not saying that anyone is misspeaking to us now. We just have not been able to get to that certainty on this question.

MR. GOODWIN: Is that a roundabout way of saying the applicant said we talked the homeowners and the chairman's group saying, so who do we believe?

MS. HOLLOWAY: And in kind of stepping back and looking at --

MR. OXER: Roundabout way of saying there are multiple perspectives on this.

MS. HOLLOWAY: Yes. And I think that in some of the information we've received, it's really easy to see how someone could say this and someone else could hear that, which creates a problem for us because we weren't there.
DR. MUÑOZ: It creates a problem for us too.

MS. HOLLOWAY: I understand. So the question really on that item, Chairman Dutton had requested that he be allowed to withdraw his letter based on his concerns that fraud occurred in gaining that support from him. If the Board were to decide that there is sufficient concern regarding how that letter was procured, then the next question would be can Chairman Dutton withdraw his letter or would it be a nullity -- it's a legal term, I'm not an attorney, I just play one on TV.

MR. OXER: You should see what we play.

(General laughter.)

MS. HOLLOWAY: So if in fact, after you hear from everyone today, if you think yes, there is something there, then the next question is can the chairman withdraw his letter when our rule basically says no, he can't, so that would be a waiver of the rule.

MS. HOLLOWAY: Okay. Thanks, Marni.

Leslie, do you have something?

MS. BINGHAM ESCAREÑO: Just clarification. A waiver of the rule?

MS. HOLLOWAY: Regarding the representative's support letter.

MR. OXER: Our rule states that they cannot withdraw after the specific deadline.
MS. HOLLOWAY: After the application deadline which was March 1.

MR. OXER: So the rules say that, so they're asking for a waiver. It would require us to offer a waiver for that to occur.

MR. ECCLES: There's no waiver that's available.

MR. OXER: Right.

MS. HOLLOWAY: I'm sorry. So it's not a waiver?

MR. OXER: There's not a waiver.

MR. ECCLES: The waiver rule is not applicable to these matters between application and award.

MS. HOLLOWAY: Okay.

MR. OXER: All right. So this would be an independent action by the Board.

Thanks for the summary on that, Marni. Deep breath and hold on.

DR. MUÑOZ: Hey, Beau, can I ask a question? So is there a rule in place that prevents withdrawing or not?

MR. ECCLES: Yes, there is. The state representative's support letter specifically says that it cannot be withdrawn.

DR. MUÑOZ: Thank you.
MR. OXER: We've taken a unique position on this or one that's evolving, a unique approach to this. This is a report item, there will be no formal motion by the Board to consider staff recommendation on this. Staff is offering a report item. The question is: Is there sufficient information in that and in what will be presented in public comment to cause us to override staff decision and make an independent decision regarding this particular issue. So we'll have public comment. We don't have to have a formal Board motion to do this.

Do you have a comment?

DR. MUÑOZ: Just to underscore your summary, Mr. Chairman. This point that the staff is making, staff is not at this time prepared to make a definitive recommendation.

MS. HOLLOWAY: Regarding Representative Dutton's letter. Correct.

MR. OXER: Tim, you have a comment?

MR. IRVINE: I would say staff believes that it has acted appropriately in accordance with the rules. We've tried to bring out all of the facts, pro and con, allow for public comment, pro and con, and I think that this is the Board's reserved right under the administrative deficiency rule to make the ultimate determination. If you find either that someone did not
adequately address an administrative deficiency or staff had determined it had been adequately addressed, or if you believe that staff has characterized something as an administrative deficiency when you believe it should have been treated as a material deficiency, then you may go there.

MR. GOODWIN: This is a question for Beau. Do we have any capability at the end of this discussion to agree with Chairman Dutton and withdraw his letter, or are our hands tied as well on the fact that his letter, by our rules, cannot be withdrawn?

MR. OXER: Let me jump in and protect you for a change. Most of you don't see the 48-inch cattle prod that he's got over here stuck in my ribs.

(General laughter.)

MR. OXER: I'll offer up that we're going to hear some thoughts on this, see if there's any new information, then we're going to receive some counsel in a quick exec session on this. We're going to actually take it -- and we'll have to hold on here for a second since we're now short of a quorum. So everybody hold your breath till Juan gets back.

DR. MUÑOZ: Juan's back.

MR. OXER: Okay. Juan's back. The return of Dr. J.
All right. We're going to have some comments on this, see if there's anything new, then we'll take a fresh look at this or a continued look to see if there's any modifications to our perspective on it, and then we'll have some thoughts. We'll have the exec session to receive counsel because there's some legal aspects that we want to consider on this.

So what I'm going to ask you to do because there's considerations on each of these, we're going to take this item and public comment on this item, and then the second item and have public comment on that item, and we're going to retire to exec session and come back and act or not with respect to this item. So is that clear to everybody? Got where we're going?

All right. I would remind everybody -- there seems to be a lot of people that want to talk and we'll give you an opportunity to present your position and information, and anybody that's going to be taking the same side or reinforcing an argument, I would offer that your argument is not made stronger by being made louder or by being made again. So you have an opportunity to simply say ditto and keep your comments short, because we have apparently plenty of people that want to speak today.

This is not an appeal so I'm not going to present an opportunity for rebuttal or argument, so
whatever you've got to say, get up and say it in your three minutes, and what we're going to be looking for is any new information. I would point out to everybody that there was extensive commentary made on this item at the last meeting. We requested for more information, more background from the staff, they've provided it. There seems to be voluminous materials in the Board book on each one of these matters, so if anybody wants to have more details or has questions about those, I refer you to the Board book of this meeting and the one from our prior meeting.

So the first question is: Is there anybody here representing any other representative's office? We will incorporate Chairman Dutton's information into this first. I would point out, just as a courtesy to our legislature, we provide them an opportunity to speak first. Now, sir, if you wish to speak on this one as opposed to the second item. Is it this one? Okay. We'll have you speak first.

MR. RANKIN: Thank you, Mr. Chairman. Thank you, Mr. Irvine. My name is Guy Rankin and I'm speaking with Representative Coleman's office. He was going to provide you a letter; I don't know if you've gotten your letter yet.

MR. OXER: Certainly not in time to go into the
Board book.

MR. RANKIN: His main concern was a project called Palm Park that was treated a little differently than this one is being treated. There was a letter, I think Marti remembers that one, it was 30 housing units that had something similar, and at that time staff recommended that that project not go forward. It was less than two years ago and it was in Representative Coleman's area, and that project was kicked out for not having the correct letter on the letterhead. Even though it was a TRZ project with Midtown TRZ and Midtown Redevelopment Authority, the letter was on the wrong letterhead.

MR. OXER: And what was the date on this, Mr. Rankin?

MR. RANKIN: I believe it was 2014.

MR. OXER: So recently.

MR. RANKIN: Yes, very recently, and I think Marni handled that one. And that whole project got kicked out, and the pastor was here last time, and that was his concern with Representative Coleman that that project got kicked out for not having one letter being switched and the whole project got kicked out. So Representative Coleman wanted to bring that to your attention if we're going to be consistent in our actions. But he totally supports affordable housing. He's a big advocate of Mr.
Irvine and your Board, but if we're going to keep things the same, we've got to keep things the same way.

MR. OXER: This is a very competitive process and it draws support from everybody that wants their project taken care of. We recognize that.

MR. RANKIN: But that one project was kicked out because a paper didn't match.

That's it. Thank you.

MR. OXER: Okay. Are there any questions for Mr. Rankin?

(No response.)

MR. OXER: Okay. Thank you, sir.

Okay. We'll start here, and don't forget to sign in. One more reminder, everybody sign in so Nancy can identify you on the record here because what you tell us we're going to write down and hold it for a while.

Okay, Donna.

MS. RICKENBACKER: Good morning, Chairman Oxer. I assume, based on what you're saying, you're taking this one by one?

MR. OXER: One by one in order of the projects, but we're going to do all of the discussion.

MS. RICKENBACKER: Yes, sir. With respect to the issues pertaining to The Standard on the Creek, you're taking those issues one by one.
MR. OXER: No. We're going to take everything on that. We're going to take the applications one by one.

MS. RICKENBACKER: Okay. So the first issue with respect to The Standard on the Creek has to do with the fees. First of all, I represent two competing applications behind The Standard on the Creek. I'm not involved in the neighborhood opposition, don't want to be involved in that, obviously. I was involved in something similar to this last night in a zoning case and not very comfortable with it.

The two applications behind The Standard on the Creek are both being represented by Cynthia Bast, so I'm kind of up here on my own with respect to those applications, and by the way, one of those applications is in a high opportunity area of Harris County, northeast Harris County, that is behind The Standard on the Creek for no other reason than it didn't receive support from the state rep who doesn't support family developments in his district.

So with that being said and with respect to the fee issue, there are just errors in this application, in particular this fee issue. So I want to point out that our rules are very clear with respect to how much an applicant is supposed to pay at pre-application and how much an applicant is supposed to pay at full application,
and the rules specifically say an application must be complete and submitted by the required program deadline. It goes on to say in our manual that an application and fee payment must be received by the agency on Tuesday, March 1, or the application will not be accepted. And it goes on from there to speak to if the application chooses to use postal delivery and they don't receive that, then obviously the application will be terminated because it doesn't receive its fee amount.

So they didn't pay the right amount of fee and they're represented by a consultant that's been in this program longer than I have. So I just think that if we're going to apply the rules consistently, then we need to recognize that that fee was not paid in a timely manner and the application should be terminated.

I'll also point out that there were 141 applications filed this year and so the staff is representing that six didn't pay the right amount of fee, so that means that 135 applicants did file applications and did pay the right amount of fee in a timely manner. So I'm not fully understanding why we're kind of putting those at a disadvantage when these other applicants, total of six, did not pay the right amount of fee. And if the concern of this Board is, well, that's six applications, what does this mean.
Well, last year, I want to remind the Board, you all denied Colonia points to six applications and that reallocated all the credits in Region XI last year. That, coupled with the fact that on any number of occasions I've seen this Board terminate applications because they weren't properly bookmarked, including, I might add, a veterans community that came before you all three years ago. It broke everybody's heart to watch that happen.

I just ask that the Board recognize that and follow the rules, that rules that clearly need to apply to everybody with respect to the fee payment.

Thank you, sir.

MR. OXER: Thank you.

MR. FORSLUND: Good morning. My name is Brad Forslund with Churchill Residential. I will try not to repeat anything that Donna said, but I'm here in opposition to The Standard on the Creek and feel that this application should be terminated as well for the fee issue.

Not to get into the rules, but Subchapter G, Section 10.901 says each application must -- and I repeat must -- be accompanied by the application fee. And it says the application fee will be $20 per unit based on the number of units in the full application. The pre-app and the app stand alone, you cannot tie those two together in
terms of the fees.

In the research that was presented to the Board, it appears that TDHCA staff agreed with this, based on what I saw. According to Cynthia Bast's email of May 5, TDHCA staff raised a concern that the application fees paid for application 16015 and application 16118 were insufficient. Specifically, TDHCA staff indicated that they application fees were underpaid by $20 and $100, respectively.

And then in Representative Dutton's letter, dated June 29, 2016, addressed to Mr. Irvine, which states: "The documentation provided to the neighborhood also shows that your staff recommended that the application be terminated based on the fee error."

As you may recall, on May 26, we had an application, Churchill at Golden Triangle, TDHCA 16260, received a five point penalty as a result of the administrative deficiency process, making it noncompetitive in Region III. The reasons for the penalty were extremely minor, in my opinion, compared to the current issue of nonpayment of fees. Our appeal was declined for a reason of a minimal documentation issue, when in fact all the information was in the application and could have been evaluated.

I think it's fair to say at the core of that
decision by the Board on May 26 was that TDHCA was going
to use a policy of strict interpretation of deadlines in
rules. You can read the transcript and this policy was
clearly demonstrated in the decision to enforce the five
point penalty.

I'm not asking for the Board to reinstate our
five points, though that would be nice, but I'm asking
that the Board administer their decisions fairly and
consistently and apply the same standard that was applied
to us be applied to The Standard on the Creek and these
other five applications.

Thank you for your time.

MR. OXER: Okay. Thanks, Brad.

DR. MUÑOZ: I have a question.

MR. OXER: Yes, sir.

DR. MUÑOZ: You mentioned some letter from the
representative's office that attributed some statement
from our staff that this project should be disqualified
because of the fee. Do you recall the date of that
letter?


DR. MUÑOZ: I don't recall that statement
offhand.

MR. OXER: Marni, are you familiar with it? I
get to ask her, but anything else for Mr. Brad?
MR. OXER: Thank you, sir. Can you air that out any?

MS. HOLLOWAY: Chairman Dutton's letter that was read into the record at the June 30 meeting, which is in your Board book, that's the letter dated June 29, speaks to information that the homeowners association received as the result of a public information request. That's what brought the application fee issue up to the surface.

Staff had originally, when we realized there was an issue with the fee, headed down the road of termination. And as has happened with several other issues, as things work through the process and through routing and before they get out, sometimes that changes, but that original letter that we had drafted that never went out was still part of the record for the application that the homeowners association received as part of their information request.

DR. MUÑOZ: Clarify it never went out.

MS. HOLLOWAY: It was never sent; the termination letter was never sent out to the applicant.

MR. OXER: So essentially, there was a process, staff evaluates these, you recommend something, and it goes through the process.
MS. HOLLOWAY: It goes through multiple routing and sometimes it comes back exactly as we sent it in and sometimes it comes back very different.

MR. OXER: Right. And ultimately it goes from there to Tim because he signs it as the E-D.

MS. HOLLOWAY: Or signs off on it.

MR. OXER: Right, signs off, or would, but ultimately the decision on this essentially comes up through the process on appeal and gets to him, and then he makes a decision and then if somebody wants to appeal that, it comes to us.

MS. HOLLOWAY: Right. This letter never even got to the appeal stage.

MR. OXER: Okay. So the point that Brad refers to is that this stated in that letter that was not sent, and it's just part of the record as part of the record.

MS. HOLLOWAY: Yes. It's part of the record for the application.

MR. OXER: Basically the completeness of the file for the application.

MS. HOLLOWAY: Right. So of course, if there's a public information request and someone asks for all information, we have to provide them with all information.

MR. OXER: It's not a question of whether or not it was appropriate to provide, it was just trying to
understand the context.

    DR. MUÑOZ: And that letter that didn't go out, Marni, did it say -- was it phrased, for example, that there would be a possibility of termination or termination based on further research related to the fee, it could be an outcome line that. Or did it stated like at this point in time we would recommend termination/disqualification. What was the tone of it? Was it exploratory or was it definitive?

    MS. HOLLOWAY: It was definitive. As I recall, it was "We are terminating your application, you have a right to appeal" would have been how we would have handled that question.

    MR. OXER: Okay. Thanks.

    MR. VRUGGINK: Thank you for the opportunity to address the Board this morning. My name is Matthew Vrugink, and I'm a member of the applicant.

    I want to speak to the misrepresentation item. You know, a lot has been said about me, what I have said or didn't say, and I've thought a lot about how you prove that you did not do something. I think all I can say and all I can do is -- all I can say is that I did not mislead Representative Dutton or his staff, and all I can do is provide letter after letter after letter of detailed communication and correspondence.
You know, we submitted a timeline of events into the Board book, and I will not recount all of our efforts, but I do want to provide some context. We started reaching out and communicating with officials in October of last year. This included direct outreach to Councilmember Jerry Davis, Commissioner Jack Cagle and Representative Dutton. I personally met with both Commissioner Cagle in October and multiple times with Councilmember Davis in December and January. But after 30-plus emails and 30-plus calls, I was never given the opportunity to meet directly or speak over the phone with Representative Dutton. Instead, I had a 15-minute meeting, maybe less, with a member of his staff in late January, which admittedly the staff cut short.

During that 15 minutes I gave an overview of the project and notified the staff that we had met with other officials, with Cagle and Davis, and that I did not foresee opposition from other and that I anticipated their support. The fact is that the only condition that Representative Dutton's staff conveyed to me was that individuals with criminal backgrounds should be given housing opportunities and not automatically be denied, to which we agreed in writing.

Representative Dutton has never spoke with me, he's never met with me or any one of the applicants, not
before the application, not after the application and not now. A couple of days before the scheduled meeting in Houston, I reached out to Representative Dutton's staff to schedule a call, meeting, anything to discuss, and admittedly in Representative Dutton's staff's notes, Tamoria was advised not to respond to me and not to reach out to me. Yes, that meeting did occur a couple of days later. I reached out to Tamoria the day before advising her of the terrible weather, the fact that planes were being canceled. She acknowledged the bad weather and said, yes, if there's terrible weather the meeting will be canceled. And then she said, Don't worry about attending if that's the case. I responded: I'll be happy to make myself available at any time to discuss in more detail. And that was the end of the conversation. Therefore, the only information Representative Dutton has on this application is from a third party account from a 15-minute meeting, maybe less.

Commissioner Cagle asked me to meet with the school district. We did and provided information. Councilmember Davis asked that we include minority and women-owned businesses in the construction process. We agreed. Representative Dutton's staff never asked me if had met with Fall Creek, with the neighborhood, with residents or if we had their support, and I never told
them that we did.

We've demonstrated a complete willingness to reach out anyone at the request of any politician. Indeed, we did so on the three other applications this cycle. If Representative Dutton's staff asked me to meet with the Fall Creek neighborhood or any neighborhood, I would have done so. It was just not a topic of conversation.

I very much appreciate the time that the TDHCA staff has spent reviewing the volume of content and it's unfortunate that we're in this position, but the fact of the matter is I did not mislead Representative Dutton or his staff in any way. And I thank you for your time.

MR. OXER: Thanks, Matthew.

Juan, go ahead.

DR. MUÑOZ: Were you here earlier?

MR. VRUGGINK: Yes, I was.

DR. MUÑOZ: You listened to the chairman's remarks?

MR. VRUGGINK: Yes, I did.

DR. MUÑOZ: He represents that that had been part of the request to you to meet with the community, and you're indicating that it was not.

MR. VRUGGINK: I understand that that was his impression or his position, but that was not the case.
DR. MUÑOZ: Thank you.

MR. OXER: Thanks, Matthew.

MR. VRUGGINK: Thank you.

MR. OXER: Cynthia.

MS. BAST: Good morning. Cynthia Bast of Locke Lord, representing the applicant for The Standard on the Creek.

We really do appreciate the time that the staff and the Board has taken to listen to everyone who wants to have a voice with regard to this development. The change this year in administrative deficiencies perhaps has been challenging for both the staff and the Board.

You previously heard testimony thanking the staff for making it a more transparent process this year, and I think with that transparency comes the opportunity for better understanding and discussion and perhaps changing as we go forward if that's appropriate.

There are things that we know and understand now that we might not have known and understood previously. And so as this might be a painful process, I do think it is a helpful process to the agency overall.

We have presented three letters on these three different points: the application fee, the financial feasibility points, and the material misrepresentation. And our letters are intended to really be a legal
analysis, taking the facts and applying them to the rules that we have in place, because the courts are clear that a state agency must scrupulously follow its rules, and so that's what we always try to do.

I will touch on the application fee issue since it has been brought up in other testimony. On this we need to start with the statute. The statute says: A fee charged by the Department for filing an application may not be excessive and must reflect the Department's actual costs in processing the application. So that's where it starts and that's where the rules come from.

From there we go to a rule that says the application is $30 per unit. Then the rule goes on to say but if you split it up between a pre-application and application, it's $10 at pre-app, $20 at app. It is silent as to what happens if you change the number of units between pre-app and app, that's not in the rules. But what is in the rules and what is in the statute is that the fee, the overall fee is $30 per unit and that the fee cannot be excessive and it must be consistent.

So I gave you three scenarios, one where there's a pre-app and an app and the number of units go down. When that happens, if you pay the $10 and then the $20, you wind up paying more than $30 per unit, you may pay up to $35 per unit. In the reverse scenario with a
pre-app and an app where the number of units go up, you wind up calculating it less than $30 per unit and then of course have to round up to meet the rule. In the third scenario where you just file an app, you pay $30 per unit. So it cannot be that you could file an application for the same development in three different ways and pay three different fees. At the end of the day, an applicant needs to pay $30 per unit.

So we firmly believe that the applicant paid the right fee and complied with the rules because they filed an application fee with their application. And I'm happy to address more on that if you have more questions.

I do want to just briefly go --

MR. OXER: One minute.

MS. BAST: Yes, sir. I'm not going to address the financial feasibility. We do appreciate staff's support on that one. I'm going to address the material misrepresentation.

Again, in the context of the rules, the rule says that an applicant or an application can be ineligible if the applicant has provided fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission. That's our rule. Mere allegations of wrongdoing are not sufficient. We have to find that there's been a material
action here, and so for that we need evidence.

You'll notice that in your staff writeup this has not been framed as a claim of fraud because fraud has a very high legal standing that requires intent and actual deception, it's been framed as a material misrepresentation. A material misrepresentation standard would be something material is something that forms a substantive part of the decision-making process. But as your staff has testified, they have not found corroborating or uncontroverted evidence that there was a material misrepresentation or a material omission.

You have three different people with three different recollections or maybe different ways of describing their recollections, talking about a meeting that occurred in 15 minutes. We do have evidence that says support, support was discussed, but what that is is not clear in any evidence. We have an applicant that says that they talked about the support from Commissioner Cagle and Councilmember Davis.

So the last thing I would say is that if this were material, then when the email came out with Representative Dutton's support letter that said, By the way, this letter is conditioned on the fact that you have agreed that you will consider ex-felons on a case-by-case basis, it didn't also say and our other standard is, our
other condition is, our other understanding is that you've talked with the neighborhood, you've talked with the Fall Creek HOA. That wasn't reflected in the communication when the office sent that letter out.

So I think that if that were a material issue that it would be logical that there would be some evidence of followup, some evidence of can you show me your letter of support or something like that from the neighborhood. And so in the absence of evidence, when human communication is not perfect, we're not required to be perfect under our laws and our rules.

MR. OXER: That's a good thing.

MS. BAST: And thank God for that. We just need to meet the standards, and in this case with a lack of evidence of wrongdoing, we do not meet the standard to claim that there was a material misrepresentation or omission that should cause this application to be terminated.

MR. OXER: Thanks, Cynthia.

Any questions from the Board?

(No response.)

MR. OXER: Is that everybody who wishes to speak on this item? Apparently not. Don't forget, if you want to speak you have to be in the front row so I can find you. Okay?
MS. LOTT: I apologize for that.

MR. OXER: That's all right.

MS. LOTT: Chairman Oxer, members of the Board.

My name is Ann Lott. I am the executive director for the Inclusive Communities Housing Development Corporation. I am here in support of the development, The Standard on the Creek.

I want to start by saying that I am not here representing the developer. I don't know the developer, I met him for the first time today, he seems like a great guy. I have spoken with him over the phone and via email. I also can't really speak to the administrative fees because you have a process and a policy by which you handle that, you've handled this before. I'm here to talk about what no one else has said, the pink elephant that's in the room. This issue really isn't about admin fees, it really isn't about the character of the development, it is about the people who are going to live in the development, and that's who I'm here to speak on behalf of.

I am very concerned about some of the emails and some of the blogs I'm reading from this neighborhood association that this developer is being raked over the coals for not meeting with. I think it's important to recognize that the rules spell out exactly who needs to notify as far as the HOA, and there's been no mention that...
he's failed to do that. I am concerned that the people who will live at this site are being referred to as ex-felons. Why do we assume that we have to have a conversation that stereotypes the people who will live here? Can we all agree that criminals, ex-felons, thieves, thugs, gang members, these are all the words that have been used to describe the families that will live there? Can we just assume that a lot of times for these particular developments there is a process for which the individuals are going to be screened and the low income families shouldn't have to pass another standard?

I'm also very concerned there have been many comments made that this developer will have to take Section 8 and because he will have to Section 8, we don't want them in our community; otherwise, it's going to be another, and I quote, "murder central."

It's disheartening that the representative would come and try to pull the support. I heard his comments, I heard him say that he's not under any pressure. It appears that he really is under some pressure, and I hate to see that he doesn't have the political courage to stand and say this is going to be a good development, it's one that I support. And I would like to hope that you will take into account the interests of all of Texas's citizens, not just a few who live in
areas where they don't want poor people in their neighborhood.

Thank you for the opportunity to address you this morning.

MR. OXER: Thank you for your comments, Ms. Lott.

Okay Is there anybody else who wants to speak on this item?

MR. GOODWIN: I'd like to ask her some questions, if I might.

MR. OXER: Sure.

MS. LOTT: Me?

MR. GOODWIN: Yes. I don't think anyone on this Board or that I've heard on this staff has referred to these people as thugs, criminals, et cetera. If I understand correctly what's happened here is that the developer was requested by Chairman Dutton to not exclude people who were felons, and I think maybe you're addressing this Board about something that has been stated by the homeowners association. I don't remember them ever stating that to us. Am I accurate about that?

MS. LOTT: Thank you for your question. You are accurate about that. I've never heard any member of the Board or staff refer to families in that manner, however, I have read the blogs from the homeowners.
MR. OXER: I would hasten to point out that none of those blogs come from us.

MS. LOTT: As I said before, this is not questioning any member of the Board or the staff feels that way. My concern is that the reason for the opposition to this development has nothing to do with administrative fee, it has nothing to do with the developer, it has everything to do with the people who will live in the community, and I am concerned with the racial overtones for this whole conversation, not from you but from the community. But now you're being put in a situation now where you're having to make a decision that is based really on the opposition of the people in the community.

It appears, and you'll correct me if I'm wrong, that the state representative is upset because his constituency doesn't want it in their neighborhood and this developer didn't go knocking on everyone's door to make sure it had support. But just think about this for a minute. What would have happened if he had gone and met with every homeowner within a 20-mile radius? We would be in this same place. Well, maybe not, he wouldn't have written the support letter.

But that's really the issue of concern is the undertones, it is the comments about the families who will
live here. These are the families that the developers are build

ing housing for, and I certainly hope you will take that under con

sideration.

MR. OXER: We appreciate your thoughts, Ms. Lott. And I would hasten to point out that that's a conversation issue, rightly pointed out, that's going on between the community and the developer and that sort of thing. We are obliged to listen to that conversation to a certain extent. I would also hasten to point out that it would be far beyond my pay grade to determine or even make an inference of why Representative Dutton is upset or not. That's between him and whatever he's got going. We're confident that none of the commentary that you're referring to, while we know that it occurs out there, nobody on the staff produced it, the Board didn't produce it, and I don't think Representative Dutton produced any of it.

MS. LOTT: I'm just asking that you take it under consideration, that's all I'm asking.

MR. OXER: We understand and we recognize your comments and we appreciate you being here.

MR. GOODWIN: I'm a little confused.

MS. LOTT: Tell me why you're confused.

MR. GOODWIN: Well, you're standing up here saying that Representative Dutton is under pressure from
these homeowners who don't want felons living in this community, thugs, criminals, et cetera. But what we've heard from the developer is that he went to Representative Dutton and Representative Dutton's staff, on his behalf, requested that these people be in there. I think you're asking us to draw a conclusion that he's now withdrawing his support because he's under pressure for these people, yet he's the person who has done exactly what you're telling us exactly what these people, residents of Fall Creek, are so upset about.

And I've heard nothing to my knowledge, my recollection of all of this is that there's been no mention of the race of any of these people, and you've interjected that we should read into this there's a racial overtone and that he has done this because of political pressure, yet it seems to me he's done exactly what the people in the neighborhood don't want him to do or don't want which is the criminal accepting or at least the review of these applicants on behalf of the developer.

MR. OXER: That they would not be dismissed out of hand but at least be considered on case by case.

MR. GOODWIN: So I'm a little puzzled at all of your conclusions. It sounds like to me you're distraught about these Facebook postings that I see in our application of neighbors going back and forth about how
this project and ultimately their residents are going to devalue their property and in their opinion decrease the enjoyment of their community and their neighborhood.

MS. LOTT: Well, you've heard those kind of comments before, so I didn't even interject that.

MR. GOODWIN: What kind of comments are you talking about?

MS. LOTT: You've heard comments about the impact on the schools, you've heard comments about property values. I think there's enough evidence that would suggest that those comments are true. I think the thing that was the most bothersome is that the homeowners in the community expressed concern that this tax credit developer is going to have to lease to Section 8 families. The Section 8 families are the families that we serve. My concern is the characterization about people on the Section 8 program.

And everything I've said to you, ex-felons, criminals, thieves, these are not comments that I made up, this is what I'm reading. They basically requested the state representative to find a way to kill the application. Whether that's his motive or not, that's basically what we're reading, and then all of a sudden because his constituents are upset he's pulling his support. But I'm asking you to look at why they're upset,
that is what my comments are meant to speak to.

I did not even imply that they were your comments, I certainly didn't imply that they were the staff's comments, but they are the homeowners association's comments and these are the comments they made to the state rep and they said kill the deal, find a way to kill the deal. I did hear Ms. Holloway say that there were open record requests looking for all transactions related to the deal, and that was in an effort to kill the deal. That is something that I would ask that the Board take into consideration.

As I stated before, I am not here representing this developer or the development, I don't know him. I am here representing the people who are going to be denied access to the development if the Board decides to terminate this application.

MR. OXER: We appreciate your comments, Ms. Lott.

MS. LOTT: Thank you so much.

MR. OXER: Okay. Are there other comments to be made on this by somebody new who wishes to bring up something new?

MR. LIKOVER: Board, thank you for allowing me to speak again. I know you want me to keep it short, so I will, and I know you want to only hear new things.
MR. OXER: Clay, you've got to tell us who you are.

MR. LIKOVER: I'm sorry. My name is Clay Likover. I'm a member of the applicant.

MR. OXER: Otherwise, on the transcript you're Unidentified Citizen.

MR. LIKOVER: That might be better.

(General laughter.)

MR. OXER: My problem is I can't get away with that, my name is up here.

MR. LIKOVER: Clearly you have voluminous materials in your book that show that there was no fraud by us. Proving that there was no misrepresentation by us is more difficult. I think I want to reiterate the last thing that Cynthia said which is that -- let me start at a higher level. You know, what we are trying very hard to do is to provide quality housing in high opportunity areas. We see a massive need for it and we think we can do a very good job of bringing our skills to do that.

We had four potential project we pre-app'd on. Two of them are not here today because we suspended the efforts of this when politicians asked us to go get neighborhood support, we met with the neighborhoods, they were against it, we dropped those deals. The two that we have here are here because we either got the support the
politicians asked us to get, or in this case we honestly didn't even think to meet with this neighborhood. Nobody asked us to. Representative Dutton, through his staff, his one condition for his support was that we would consider people with criminal backgrounds on a case-by-case basis, that was it. You have those emails, it's clear as day.

The other thing I want to state because I was here, I heard Representative Dutton's comments, I think it's important to tell you this. Not only has Matt reached out to his staff, called and emailed 30 times, I have as well, I got his personal cell phone number, I've called it, I've never gotten a call back. We would love to talk to him or his staff about this and clear up the misrepresentations of what the neighborhood told him we said. We'd love to be on his team and do more with him. Obviously that's not going to happen now. But honestly, we have called him, we have tried to clear it up, but we've never gotten that opportunity.

I think that's all I have to say. Thank you.

MR. OXER: Okay. Thanks for your comments, Clay.

Is there anything else? You've had your shot, Donna. Anything new on this item?

(No response.)

MR. OXER: Okay. Those of you in the front who
wish to speak on the second are welcome to stay.

Marni, let's have the second application.

MS. HOLLOWAY: The second application to be considered under this item is number 16380, Sierra Vista.

This is the application that we have the question regarding the Lopezville census-designated place. The issue is that the Lopezville census-designated place has been annexed by the City of Edinburg. A scoring notice had been issued denying underserved area points to the applicant based on that annexation. The applicant appealed and that appeal went through the process. So this is another one of those the staff does something and it goes through the process and it comes out looking different, and the applicant appealed.

MR. OXER: Yanked through that knothole and it's a little thinner on the other side. Right?

MS. HOLLOWAY: The applicant appealed and their appeal was granted based on a couple of things: one is the language that's the definition of place in our rule, and the use of census data in our rule. So because the Census Bureau has not adopted a definition of place by federal rule, the executive director believes the Department was constrained to honor the designation of the census-designated place by the Census Bureau's maps.

So the initial requester on this item provided
us some additional information and have brought up a kind of similar issue that came up in 2007. In that instance an application was submitted in a census-designated place and they later lost points, or however that worked out, but that was 2007 and that was a different QAP and it was a different rule definition, it was a different definition of place. The requester also provided quite a bit more information from the Census Bureau. None of that is adoption of the definition in a federal rule.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Okay. Barry. And one more reminder, I know you don't need to be reminded, Barry, but sign in.

MR. LYTTLE: Mr. Chairman, I'm sorry. We have a legislative staffer here. If you wanted to grant deference like we did in the other item, we have Curtis Smith is here from Representative Canales's office.

MR. OXER: Barry, let's extend the courtesy to our staff here.

Thank you for that, Michael. You know, we depend on him for our appropriations, so yes, we're happy to have you here. Good catch, Michael.

MR. SMITH: Hello. My name is Curtis Smith and I'm chief of staff for State Representative Terry Canales
from Edinburg.

First of all, he wanted me to thank you all for
the work that you do on the commission. He really
appreciates it.

MR. OXER: It's a thrill a minute up here.
MR. SMITH: It's actually pretty interesting.

So I have a letter that I believe you have all
been distributed but I just wanted to quickly read that.

"I was recently made aware that the Department
is once again visiting the underserved points item for the
Sierra Vista Housing Tax Credit application. As you may
know, I've submitted letters in support for Sierra Vista
affordable housing community. I want to again reiterate
my support for their application for housing tax credits.

"According to the annexation documents of the
City of Edinburg, many of the current Lopezville residents
cannot access city water, and while the existing
residential neighborhoods do have limited access to city
wastewater services, there are no plans to extend services
to many of the vacant parcels located in the area. The
developer has indicated that they plan to extend public
utilities, water and sewer, along and under Awasa Road.
These services will be designed so future development will
be able to tap into the new utilities installed.

"Sierra Vista will not only provide high
quality and safe affordable housing, the added
infrastructure will also encourage additional development
and growth in an area in need. Sierra Vista will greatly
benefit both Lopezville and the City of Edinburg
communities by providing high quality affordable housing
to those in need. I respectfully request that the Board
maintain staff's and the executive director's
recommendation to award the points under consideration in
the application."

Thank you.

MR. OXER: Any questions?

(No response.)


MR. PALMER: Barry Palmer with Coats Rose.

So on Sierra Vista, what we're talking about is
whether the project should receive underserved area
points. That's what the issue is: should this project
receive extra points that are designed for an area that
has never received a tax credit allocation.

The project is in the city of Edinburg which
has received twelve tax credit awards and once the units
are built from last year's allocations and this year's
allocations, there will be 800 tax credit units within a
mile of this site. How does that make sense to award
underserved points for an area that's never received a tax
credit award when you have a virtual sea of tax credit
units within a mile of each other? I understand that
Edinburg would like to get this award but there are a
number of communities in the Valley that have not received
an award in many years and yet we're continuing to pile
tax credit units on top of each other.

The executive director, when he granted the
appeal on this, in his appeal letter acknowledged that
this is really not the purpose that these points were
designed for. So this is really a bad result, and I
understand sometimes you have a bad result and you have to
live with it, sometimes there is what we like to call a
quirk in the QAP.

MR. OXER: Actually, we don't like to call it
that, but go ahead.

MR. PALMER: It's something that ends up with
unintended consequences and you figure you've got to live
with that and you'll fix it next year, but this is not one
of those situations. This is a bad result that in order
to get to this bad result you've got to do four things:
you've got to ignore a common sense reading of the QAP and
the rules; you've got to ignore the direction from the
Census Bureau; you've got to come up with a supernatural
interpretation of how a place can be two places at once;
and you've got to overturn long established precedent of
Now, if you look the rules, these points are to go to a place that has never received a tax credit award, and a place is defined as either an incorporated place or a census-designated place, and the Census Bureau says that you can't be in both. We have a letter that was provided in your Board package from the Census Bureau that we received recently since the last meeting, and I point it out because I know your materials were extensive and you may not have had a chance to see this letter, but the Census Bureau says that CDPs are created for unincorporated areas and by definition CDPs can only exist outside of incorporated places. A single tract of land can only be one or the other, a CDP cannot be incorporated at the same time.

So here this site was in a CDP, now it's in Edinburg, and the applicant claims to still be in a CDP but for this point item only. For everything else they're saying they're in Edinburg. For example, you get points for getting a government resolution from the city supporting your deal. They submitted a resolution from Edinburg. There was no resolution from the Lopezville CDP. If they're in the Lopezville CDP, they needed to have that resolution or they shouldn't get the points. So what they're doing is they're claiming points as being in
a CDP for one item and then they're claiming points for
being in Edinburg on all the other items. But the Census
Bureau's definition says that you can't be both places at
once.

Now, they've pointed to this definition of
census data as if that's controlling, but census data is
population, it's poverty numbers, it's not determinative
of where you are. We have always determined where a
location is as of March 1. Otherwise, then this site is
not in Edinburg and they can't get any of the points for
being in Edinburg. But in fact, the site is in Edinburg
and so it can't be in a CDP.

So it makes no sense to award underserved area
points for an area that has more than its share of tax
credits, where it's 800 units of tax credits within a mile
of each other, and as I said, we have an issue with this
overturning long established Board precedent. I don't
have any more time to go into that and that needs to be
fully developed, so we have another speaker who will cover
that issue.

But I ask you to read the rules in some common
sense that you can't claim points and say you're in a CDP
for one thing and can't claim points and say you're in
Edinburg for another thing. Thank you.

MR. OXER: Are there any questions for Barry
MR. ECCLES: I have one question, actually. You referenced the Census Bureau definition. Is that set out in federal statute or rule?

MR. PALMER: It is not set out in federal statute or rule, it is their definition that's on their website as part of their rules, not regulations. But we would expect that this agency would give deference to the Census Bureau's rules the same way that we would think that they would give deference to the TDHCA's rules. I mean, a lot of what we go by are rules, they're not regulations or statutory.

MR. ECCLES: Thank you.

MR. OXER: Any questions from the rest of the Board?

DR. MUÑOZ: Is it set out as a rule? Because in this letter that I'm reading, Barry, it says in that letter CDPs are not statutory, they are statistical entities defined and created by the Census Bureau with occasional input, et cetera.

MR. PALMER: So what I'm saying is set out as a rule is the Census Bureau's definition of a place which is you're either in an incorporate place or you're in a CDP and you can't be in both.

MR. OXER: At the same time.

MR. PALMER: Right. You're in one or the
MR. IRVINE: I would like to offer at least my understanding of kind of a nuance here. You have statutes at the state level and at the federal level, and when an agency is assigned responsibility for implementing that statute, if it's given authority it may promulgate codified requirements for how that statute is implemented. On the federal level those are referred to as regulations and they are in the CFR; in state law they're referred as rules and they're in 10 TAC, the Texas Administrative Code. So on a state level what we call a rule, on the federal level it's called a regulation. Those things have the force and effect of law, and from my perspective, the definitional provisions on the Census Bureau's website do not have that force and effect of law aspect.

MR. PALMER: But we have this letter from the Census Bureau clearly saying you can't be in both, you've got to be in one or the other, you're either in a CDP or you're in the City of Edinburg. So this developer needs to choose which one they're in and only claim points for being in that one and not do what they've done which is claim points for being in both.

MR. OXER: Let me ask this. You said the City of Edinburg provided a statutory support letter, or a letter from their management, essentially the governance,
to support the project. You said if it was going to be from the CDP, the CDP would have had to provide that letter.

MR. PALMER: Right.

MR. OXER: Does the CDP have a governance?

MR. PALMER: It's the county. It would be the same thing if somebody was in Harris County and then they got annexed into Houston, you could only be in one or the other. If you were outside of the city, you would get a support letter from the county, which they didn't get.

MR. IRVINE: Actually, under state law it's a little bit more complex than that. If you are in an extraterritorial jurisdiction, you get a resolution from the municipal government and from the county government.

MR. OXER: They got it from the city but they didn't get it from the county, I gather.

MR. PALMER: Right, or from the Lopezville CDP.

MR. OXER: That's what I was asking.

MR. IRVINE: CDPs can't give such letters.

MR. OXER: That's what I was asking. There is no Lopezville administrative entity to provide that letter. Is that correct?

MR. PALMER: Right. So it would be from the county. If they're not in the city, they're in the county and they would need to get a letter, a resolution from the
MR. OXER: Okay. Hold on a second.

Counsel, I have a question, because this seems to hinge on whether or not they are choosing to be in these two locations at the same time, and our rule states that it has to consider a location at the time of the last census. Is that not correct?

MR. ECCLES: Census data is contained at 10 TAC 10.2(d), and it says that "where this chapter requires the use of census or American Community Survey data, the Department shall use the most current data available as of October 1, 2015, unless specifically otherwise provided in federal or state law or in the rules." It continues from there.

MR. OXER: Okay. But essentially, that data -- is there an update to that census data as of that date that would put this -- I'm exploring here, Barry, hold fire -- so that essentially the 2000 census says it's a CDP, it goes through some process, there's no update on that with respect to the census data, so even though Edinburg had annexed the location, then even though it's in Edinburg for purposes of its current location, it was considered part of the CDP at the point of the census. And right or wrong about whether or not that's the perspective, is that a fact pattern we can work off of?
MR. PALMER: Yes, I think that's right, but what the Census Bureau is telling us is once you are annexed into a city, you are no longer in a CDP. We're not saying that the Lopezville CDP doesn't exist anymore, it's just this site is no longer in it, it is now in the City of Edinburg.

MR. OXER: And particularly given the generous availability of affordable units there that we've supported already within a mile of this property you said?

MR. PALMER: Right. So I mean, obviously it makes no sense to give these points to this project, it makes no logical sense that you would give two underserved area points for an area that has never received a tax credit allocation to this site that is surrounded by tax credit units. So the question is is there something in the rules that makes you, that forces you into this bad result, and what I'm saying is no, that the Census Bureau is telling us you're either in a CDP or you're in a city, you can't be in both, and so you can only claim the points for being in one or the other. So either you get the resolution points from the city or you get the CDP points, but you don't get them both.

MR. OXER: You've got to pick a side in the fight; which side are you on is the question.

Okay, thanks.
DR. MUÑOZ: Barry, before you sit down, those 800 units, I'm assuming that they're in Edinburg?

MR. PALMER: Yes, they're all in Edinburg -- they're not all in Edinburg, they're just within a mile of this site.

MS. DULA: Good morning. Tamea Dula with Coats Rose.

MR. OXER: Tamea, hold on just for a second. Anything?

MS. BINGHAM ESCAREÑO: I'm good.

MR. OXER: All right.

MS. DULA: I'd like to follow up on a couple of things that Barry said. Number one, the points are for being in a place, with a capital P. The rules for 2016 define a place as being the U.S. Census Bureau's definition, it does not say as federally promulgated, it does not say statutory, it just says the Census Bureau's definition.

You go to the Census Bureau, they publish a glossary that uses their terms.

MR. OXER: So we can determine what the definition of "is" is.

MS. DULA: So we can get the definition, exactly. I think they do it that way because every ten years they may change and they have more flexibility, but
they do not statutorily enact them nor do they publish them in the CFRs. However, because the concept of a census-designated place is a difficult one, they have published that one in the Federal Register to explain what they look at, and you have it in your materials as an attachment to Barry's letter with the Census Bureau's letter.

So they say a place is either an incorporated area or a census-designated area. There's a confusion here. The maps are not data, the maps are spatial designations of where the Census Bureau acquired the data that it acquired, which are numbers, population, incomes, poverty. The maps are not data, so the rule 10.2(d) which says you use the census data as of October 1, 2015 doesn't come into play. The issue is the definition of place because if you're in a place that qualifies, you can get two points. The definition of place is the Census Bureau's definition which is either an incorporated entity or a census-designated place, never the two at the same time.

I'm actually here to tell you about the need for certainty. This is a competitive program, developers need consistency in how the rules are interpreted. We get that consistency through TDHCA's workshops, through questions to the staff, through FAQs, and through the
Board's prior decisions. You've already addressed this issue, you just didn't know about it.

In 2007 -- and there are few staff members, no general counsel, no executive director and no Board member is here that was here in 2007.

MR. OXER: For some of us that's a good thing.

MS. DULA: Yes. However, developers and lawyers survive and we have long memories and in 2007 the Board heard a very, very similar case called Casa Alton. In that case, Casa Alton could get six points if it was in the CDP or four points if it was in the City of Alton. In 2000 census the maps showed the site in the CDP. So Casa Alton said, I'm in the CDP because I'm on the map here. And the Board said, No, you were annexed before March 1 of 2007, you are in the city, you do not get the six points for being in the CDP, you get four points for being in the city.

You established a policy. You take a snapshot on March 1 regarding the location of the project for the purpose of location oriented points. You've been following that. The staff followed it, they denied these points. That denial was appealed to the executive director. The executive director granted the appeal, but why? Because he could not find anything that said that you could not be in an incorporated area and in a CDP at
the same time. We have provided that information, the
missing link, it's the Census Bureau's definition. It's
either incorporated or a CDP, you cannot be in both at the
same time.

Back when Casa Alton was decided, it was
slightly different insofar as the term was area, with a
capital A. Area has almost the same definition as place,
with a capital P. Area in 2007 was defined in the QAP as
the geographic area contained within the boundaries of
one, an incorporated place, or two, a census-designated
place as established by the U.S. Census Bureau for the
most recent decennial census. The last words, for the
most recent decennial census, are not part of the current
definition of place, but otherwise it's identical, the
definition with the Census Bureau, which our rules refer
to as definitive. So we've accepted back in 2007 that you
couldn't be in both at the same time.

It's the definition of place that controls this
issue, not where you are on a census map from 2010,
because that map just shows you where the Census Bureau
collected their information, and because in 2010 the site
was not in the City of Edinburg, they said this spot here
is where we got this information and we're going to call
that Lopezville, and that is just a designation for the
purposes of those people who use this kind of information.
It does not define the CDP. The CDP has its own definition published in the Federal Register and that is what should control.

So we are just requesting consistency and you following the established policy that you take a snapshot as of March 1. You've been doing this, last year you did it. There's no reason why you should change this policy for this particular application. If you want to change it, then you should do so going forward for the 2017 QAP.

I don't see a reason why you should. But by denying the appeal, overturning the E-D's decision, which was made without all of the information, you can continue to follow your established precedent, you can continue to use those underserved points for what they were intended, extra points for projects that really are in the areas that are underserved, and you can go home feeling good that you did well.

MR. OXER: That would be a refreshing change.

(General laughter.)

MS. DULA: Questions from anybody?

MR. OXER: Any questions?

(No response.)

MR. OXER: Thanks, Tamea.

MS. DULA: Thank you.

MR. OXER: Ms. Bast, would you care to jump in
on this one?

Mr. Flores.

MR. FLORES: Good afternoon, Mr. Chairman, members. My name is Henry Flores. I represent the applicant. I'm here to ask that the Board maintain staff's recommendation to award the underserved points to this application.

Staff applied its rules appropriately in this case. The rule is clear and the rules applied very specifically and correctly in this situation. The development site is located in Lopezville CDP. The definition in our rules of place is an area defined by the U.S. Census Bureau. The definition is inclusive of both incorporated and unincorporated areas. There's no distinction in our rule that a development site can only be in one or the other. This is similar to a Colonia. Colonias can be within city limits and they can be within unincorporated areas.

The QAP and rules provide a specific date of October 1, 2015 utilizing the census data, and further states that the availability of more current data shall be generally disregarded. CDPs are statistical entities for data users by the census. There's no legal authority for their boundaries. The census also publishes what they call a geographic areas reference manual as its guide for
these specific types of entities. In their manual it says: CDPs are created or refined at each decennial census. I think that's an important key here. Effectively, what they are doing is they are creating the boundaries for ten years.

A CDP is just a conglomeration of census tracts that have similar characteristics. If there are drastic changes in a census tract, a census tract can be removed from a CDP. There's an annual process, a list that's published once a year. That list is on the Census Bureau's website which lists those types of changes that have occurred. We've reviewed the list, we've provided the list to the Department, and from 2010 to 2015 Lopezville is not on that list. There's 31 instances of this occurring, six within Texas. Lopezville, the boundaries have not changed for a CDP.

When changes do occur, there's a process. They file annually, the census does, what they call boundary and annexation survey. Those types of changes would be significant changes in the gross statistical characteristics of a census tract and an adjustment of that CDP will be made, it will be filed through their BAS and updated in their TIGER mapping software system. Again, that reference for TIGER mapping in our rules.

We've confirmed with the city manager of
Edinburg, Mr. Ramiro Garza, that a boundary annexation certification is submitted to the census every year, so the census was aware at our time of app of this annexation in the area. The fact that it's been annexed has not changed that we are located within the CDP. We also found examples of past CDPs overlapping incorporated areas. There was one called Covedale in Ohio and another one called North Amherst in Massachusetts. It's uncommon but it does occur. Even this week we verified again the maps have not changed, Lopezville boundaries remain the same since last year in October, March 1 of this year, and even July of this year. I believe staff is correct in their analysis and the points should be maintained.

And I do want to touch base on the case that was put forth as precedent. I think there's some distinct differences that are getting left out here. That year, as my colleagues have stated, it was area, the definition of area. Within that definition it was an either/or situation; those words do not exist in this year's rules. You're either in a municipality, incorporated or unincorporated, or within a CDP.

The data that the Department used for their housing needs score was based on state data, not the census data. I think also part of the determination that year was the reference material that was published by the
Department which mentioned the state data.

I appreciate your consideration, I'm happy to answer any questions, and I appreciate your time. Thank you.

MR. OXER: Thank you. Any questions from members of the Board?

(No response.)

MR. OXER: Okay, Cynthia.

MS. BAST: Good afternoon. We've passed the noon hour. Cynthia Bast of Locke Lord representing the applicant.

MR. OXER: We've still got 90 seconds before it's afternoon but keep going.

MS. BAST: Okay. My watch is fast.

You're hearing a lot of good information and I think it's all coming down to the same topic that I spoke on previously is looking at our rules and scrupulously following our rules and what do our rules say. The question has been presented: How can you be in a CDP and in an incorporated area? And the truth is that the rules, as presented, do allow for that. And Mr. Oxer, I think you've got it, it's that difference between being defined by the Census Bureau versus being defined by state laws regarding annexation.

At the end of the day, we have to decide how
does the United States Census Bureau define a place. In
the absence of a regulation, we have to look at where is
that definition by the Census Bureau. As it relates to
census-designated places, you'll actually find multiple
definitions on their website. They're all approximately
the same but you will find multiple ones. And they're all
given in the context of this is how we look at CDPs for
purposes of our decennial census. And as Mr. Flores
mentioned, with boundary annexation surveys, new
information can be provided to the Census Bureau and a
list can come out that says we've made the following
changes.

But at the end of the day, how do we know what
this place is? To know what this place is we go to the
TIGER Shapefiles. That is described by the Census Bureau
as the most comprehensive database identifying geographic
areas. That's what is says on their website. If you go
to those Shapefiles, this site is in the Lopezville CDP.
It was on October 1, 2015 and it is today. So in the
absence of a written definition of place that we can
really get our arms around that is living and breathing
through the ten years between each census, the Census
Bureau is showing us what the place of this development
site is, and it's in the Lopezville CDP.

I also want to point out that TDHCA's site
demographic characteristics report, which is used as a
tool by the applicants, identifies the Lopezville CDP as a
place for this application round.

I think where this comes about is that in your
rules the word "place" is used in two contexts. It is
used in this location with regard to underserved area
points if you're in a place. It's also used with regard
to the designation of areas as either rural or urban, and
again, when you're looking at a place for purposes of
rural or urban, the rules expressly instruct that you go
to the TIGER Shapefiles. That's the remaining portion of
Section 10.2(d) that Mr. Eccles didn't read.

But it's consistent to say if we need to know
what place we're in from the United States Census Bureau,
we're going to go get on the TIGER Shapefiles, which is
their most compressive database identifying geographic
areas, to figure out what they say about what this place
is. So that's how under these rules that we're trying to
apply today this development site can be considered in the
Lopezville CDP for purposes of these points.

And finally, my last thing I would like to
note, with regard to the consistency argument on the 2007
application, the language is slightly different, but I
also note that that QAP did not contain Section 10.2(d)
that said when we're talking about census information.
Data is information, and we can parse that and say it should be numbers, it should be population, data is information, that's how it's defined, so yes, that can include boundaries. When we're looking at census data, we look at the data as of October 1, 2015, and more current data is disregarded. That's what the rule says. That rule wasn't in place in 2007.

So it may get to a result that people think is not preferable, but we're trying to apply the rules that are in place today to this situation, and this development site is in the Lopezville CDP identified by the Census Bureau.

MR. OXER: Good. Thanks. Any questions?

(No response.)

MR. OXER: Is there anybody else that wants to speak on this item?

MR. WILLIAMS: Good morning, chairman and members of the Board. My name is Toby Williams. I'm here representing Sierra Vista, the applicant in this situation.

We have maintained from the very beginning that we are in both the Lopezville CDP and the City of Edinburg. There are numerous references throughout the application to both the city and the CDP. It's not like we're trying to do something sneaky here and slip
something in there, we're not trying to pull the wool over anybody's eyes. As of this morning, sitting out here in the audience, I pulled up the TIGER maps. As of this morning, we are still located in the Lopezville CDP.

Now, Cynthia and Henry both pointed out that the CDPs are statistical entities. They're statistical boundaries that are drawn up by the Census Bureau for the purpose of crunching numbers. So even with the annexation of this particular area, the general characteristics of the Lopezville CDP have not changed. Based on the annexation documents that the city had provided, this is an area that the city provides water and wastewater to the existing neighborhoods but they have no current plans to extend those services to the remaining vacant tracts which make up the vast majority of this area. This is an area that needs a development like Sierra Vista to come in and serve as a catalyst for future growth.

I'd also like to talk about Barry mentions that you can't be in a CDP and in a city, and that if we're in the CDP, then we should have got the resolution of support from the county. Well, that's not the case. And in fact, there's a 2016 FAQ that addresses this exact issue. "The City of Houston has a census-designated place within the city. Would that require a city resolution so that no county resolution would be needed?" And staff's response:
"The answer to this question is very much specific to the facts of this situation. In the case of a census-designated place, the appropriate entity is the entity that has jurisdiction over the development in the CDP. It could be the city, the county or both. The applicant must ensure that the correct entity provides the resolution and this can often best be corroborated with discussions and documentation with both entities."

So that's what we did. You know, we're in the Lopezville CDP, and then we looked to see are we in the county, are we in the ETJ, or are we in the City of Edinburg. We were in the City of Edinburg as well, so that's where we went and got our LPS funding and got our resolution of support.

You know, I respectfully request that the Board uphold staff's decision and grant the Sierra Vista the two points for the underserved item. Thank you.

MR. OXER: Thanks, Mr. Williams?

Any questions from the Board? Good timing.

MS. ANDERSON: My name is Sarah Anderson. I have nothing to do with either of these deals, but Casa Alton was my challenge that I won and set what was precedent seven years ago.

When I hear this discussion, it concerns me a lot because we have operated for the last ten years that
it's an either/or and people know or should have known or should have asked the question about CDP. The rules on the census are very clear, and I think the best way to look at this is get rid of CDP, let's not even talk about CDP, let's talk about whether it's just the county. And in what world would we ever say that an annex thing, that I could claim, well, the census map two years ago or a year ago has me in the county even though I've been annexed, and when could I ever get away with saying that my site is not within a city? So we have the census saying you can't be both, everything leads back to that definition, and in no world would, except for this weird obfuscation with CDP and statistical, would we be having this conversation if it was just in the county versus the city.

We looked this up because I couldn't believe that this had been overturned, and when we looked it up, the maps that you get from the census specifically say: the depiction and designation for statistical purposes does not constitute a determination of jurisdictional authority or rights of ownership or entitlement. The maps tell you this is not what you use to determine what the boundaries are.

So I hope that you go back to staff's original determination because I think it was correct.
MR. LYTTLE: Mr. Chairman, I have a legislative letter to read about this issue too.

MR. OXER: Okay. Let's hear about that. Hold on just for a second.

Donna, did you want to say anything on this issue?

MS. RICKENBACKER: Yes, sir.

MR. OXER: Three minutes, please.

MS. RICKENBACKER: Yes, sir.

I'm a real simpleminded person -- I'm sure you're going to have fun with that comment, Chairman Oxer.

MR. OXER: Let the record reflect that I was quiet on that one.

MS. RICKENBACKER: There you go.

So there's been a lot of discussion on census data and that verbiage, if you will, is in a subchapter of our Multifamily rules under general information, and it specifically says where the chapter requires the use of census data, the Department shall use the most current data available as of this October 1 deadline that everybody is referencing to. It does specifically say unless otherwise provided in federal or state law or in our rules.

I want to point out that this census data general information provision deals with a point in time
so that staff understands and can therefore make sure they have the right information at a point in time with respect to population, incomes, rural and urban designation. It was never meant to define geographic areas. And again, I go back to the fact that this provision say, again, unless otherwise provided in our rules. So you go back to what our rules, what do our rules say about how you qualify for underserved area places, and that is being in a place that, as everybody has said, is underserved, and as defined by the U.S. Census Bureau.

It doesn't say as defined by the U.S. Census Bureau in statute or regulatory information, it doesn't go that direction, it just says as defined by the U.S. Census Bureau, which clearly has definitions that define a place and establish that you can't be in both a CDP place and in an incorporated place at the same time. They make that very clear in their definitions.

And from a real kind of logical point of view, if you will, which is the only way I know how to work, is that if you think about what the Census Bureau does, if they're looking at populations in a given CDP area, if you will, they wouldn't want to double count that population. And therefore, they're making a clear distinction in their definitions of a place so that there is not an over counting, if you will, in a CDP area because that site has
been now annexed into a city's jurisdiction.

Obviously their mapping is updated once every ten years so that there is some finality with respect to the boundary areas over that ten-year period. So again, similar to what Sarah said, geographic areas, if you will, are recapped by the Census Bureau once every ten years, so we look at where that site is today, and based on your own prior decisions, it's where that site is as of March 1. And in this instance the Sierra Vista site was in the City of Edinburg as of March 1, and the Census Bureau by definition says you cannot be in both places at the same time.

Thank you.

MR. OXER: Thanks for your comments.

Michael, let's hear your letter.

MR. LYTTLE: "Dear Chairman Oxer,

"I agree with the Texas Department of Houston and Community Affairs staff recommendation based on the current rules regarding the issues surrounding the Lopezville census-designated place. The TDHCA rule for this item is clear and the Sierra Vista application merits the award of the underserved points in question.

"The definition of place in the Department's rules refers to the Census Bureau's definition of place.

The Census Bureau's information states that the creation,
dissolution, modification or amendment of a census-designated place occurs at the decennial census. Additionally, once the census-designated place is created by the census, the boundaries become effective for ten years until the next census. Exceptions to this are handled through the census annual filing of the boundary and annexation survey. Based on up-to-date information published by the Census Bureau, the Lopezville CDP boundaries have remained unchanged since 2010.

"Furthermore, Lopezville CDP is not listed in the Census Bureau's list of changed entities from 2010 to 2015 that is published after the release of the annual boundary and annexation survey, reiterating that the development site is located within the Lopezville CDP.

"While I understand that the development site has been annexed into the City of Edinburg, this particular area is still underserved and in need of your support. According to the annexation documentation of the City of Edinburg, many of the current Lopezville residents cannot access city water, and while the existing residential neighborhoods do have limited access to city wastewater services, there are no plans to extend services to many of the vacant parcels located in the area.

"Sierra Vista will greatly benefit the comities of both Lopezville and the City of Edinburg by providing
high quality affordable housing to those most in need. I respectfully request that the Board support the staff recommendation to award the points under consideration to the application.

"If I can be of further assistance, please do not hesitate to contact my office."


MR. OXER: Okay. Thank you.

Is there anybody else that wants to speak on this item?

(No response.)

MR. OXER: As I said earlier, we're going to take a break and go into executive session. Everybody sit still and listen.

The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive legal advice of its attorney, pursuant to Texas Government Code 551.072 to deliberate the possible purchase, sale, exchange or lease of real estate, and/or pursuant to Texas Government Code 2306.039(c) to discuss
issues related to fraud, waste or abuse with the
Department's internal auditor, fraud prevention
coordinator, or ethics advisor.

The closed session will be held in the anteroom
of this room, John H. Reagan Building 140. The date is
July 14, 2016, the official time is 12:16.

We've got some things to gnaw on, folks, so it
will be one o'clock, so let's be back in our seats at one
o'clock.

(Whereupon, at 12:16 p.m., the meeting was
recessed, to reconvene this same day, Thursday, July 14,
2016, following conclusion of the executive session.)

MR. OXER: The Board is now reconvened in open
session at 1:42. During the executive session the Board
did not adopt any policy, position, resolution, rule,
regulation or take any formal action or vote on any item.
So that being the case, we are underway again making full
turns.

Because of a timing issue, we're going to take
the very last item on the agenda first out of the box
here. That's you Andrew, come on.

MR. SINNOTT: Good afternoon, Chairman Oxer,
members of the Board. My name is Andrew Sinnott,
Multifamily Loan Program administrator. I'm presenting:
Presentation, discussion and possible action on the Draft
2016 State of Texas National Housing Trust Fund Allocation Plan, and directing that it be published in the Texas Register.

We last addressed the topic of National Housing Trust Fund at the March Board meeting to report on a timeline of the roundtables, public comment period, and ultimately when the funds would be available in a NOFA. Since that Board meeting, we had two roundtables in Austin and Houston that were fairly well attended and included a number of different stakeholders. In May we found out Texas would be receiving approximately $4.8 million in National Housing Trust Fund and we also received guidance from HUD regarding allocation plan submission requirements.

Over the past several weeks staff has worked on drafting this allocation plan which included making the required revisions to both the 2016 one-year action plan and the 2015-2019 consolidated plan, resulting in over the 100 pages included with this Board item. The plan covers the approximately $4.8 million in National Housing Trust Fund for program year 2016 which runs from February 2016 through January 31, 2017.

With the Board's approval of the allocation plan, we will publish the plan in the Texas Register for public comment. The public comment period will run for 30

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days from July 15 through August 15, with a public hearing scheduled for August 4. And then we intend to bring the final version of the allocation plan to the Board in September.

MR. OXER: In September did you say?

MR. SINNOTT: Yes, so after the public comment period.

We do have a waiver request into HUD that we submitted earlier this week regarding the August 16, 2016 submission deadline for the allocation plan. That's the federal submission deadline. Should HUD deny that waiver request, we'll submit the allocation plan to HUD immediately following the public comment period on August 16, 2016 and bring it back to the Board for ratification, but we don't anticipate the waiver request being denied by HUD based on emails and phone calls that we've had with them.

Some of the quick highlights from the plan. We anticipate funding eligible for profit and nonprofit entities, as we currently do with our direct loan NOFA, existing direct loan funds, HOME funds, and TCAP Funds. Anticipate using many of our existing Multifamily rules to comply with the required selection criteria. Anticipate using the Section 234 condo limits applicable to the HOME Program for the maximum per-unit subsidy limits. We
anticipate using the rehab standards in our Multifamily rules in 10 TAC to comply with the rehab standards that's required by National Housing Trust Fund.

We do not anticipate using National Housing Trust Fund for homeownership housing programs in program year 2016. We do anticipate having the ability to limit beneficiaries or give preferences to certain segments of extremely low income populations, just the same as we have that ability with our HOME funds. And we anticipate allowing refinancing in conjunction with rehab, similar to our HOME funds. So as you can see, we're trying to mirror what we do with HOME funds with regard to Multifamily for National Housing Trust Fund to kind of make it easier on staff and applicants.

MR. OXER: Any questions for Andrew? So we've basically got $4.8 million, we're trying to get it in gear, get the thing taken care of. This is procedural.

MR. SINNOTT: Exactly. And then in terms of when it will be in the direct loan NOFA, we anticipate drafting that this fall and then bringing it back to the Board in December for final approval.

MR. OXER: So approve the NOFA and the NOFA would come out, more or less, in January.

MR. SINNOTT: Right, yes. We'd start accepting applications in January, just like we did this past year.
MR. OXER: Okay. Any questions?

MR. GOODWIN: Move approval.

MR. OXER: Motion by Mr. Goodwin to approve staff recommendation on item 6(f)

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. No request for public comment. Motion by Mr. Goodwin, second by Dr. Muñoz to approve staff recommendation on item 6(f). Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

MR. SINNOTT: Thank you.

MR. OXER: Thank you.

Okay. Let's get back to 6(a). For the two items that are on there, because it was brought to our attention in a prior meeting that there were some concerns and some questions, we've asked the staff to gather additional information which they have on both of these applications. With respect to either of those, does any member of the Board wish to have any action to change or alter the status on either application?

(No response.)

MR. OXER: Hearing none, I guess the
pronouncement would be that it was brought to the agency's attention, it's been managed, it's been handled, there was a process, there was a procedure for it, there was an interpretation of rule. I have to admit there was a lot of dialogue today, a lot of heated commentary, some great points that were made. The unfortunate issue is that sometimes we have to make some hard decisions for things that simply aren't easy to do, so at this point the staff decision on item 6 with respect to application 16116, The Standard on the Creek, and with respect to application 16380, Sierra Vista, will stand as decided by staff.

Marni, next item, part (b).

MS. HOLLOWAY: On item 6(b) we have:

Presentation, discussion and possible action on timely filed scoring notice appeals under the Department's Multifamily Program rules. The application we're discussing is number 16387, Cantabria Estates in Brownsville.

The application was submitted proposing replace 34 of 74 existing units to be demolished and add 68 additional units under the at-risk set-aside and relocate them also. The Department's at-risk rule said that an applicant may propose relocation of exiting units in an otherwise qualifying at-risk development if the applicant seeking tax credits proposes the same number of restricted
units. So if you're tearing them down in one place, you have to put the same number in another place. The application was submitted proposing to construct 40 more restricted units than were being demolished.

A scoring notice was issued taking away the six pre-application points because the application did not qualify to participate in the at-risk set-aside because of that unit variance. That application was timely appealed and the executive director has denied the appeal.

This is a new construction project of 102 units to serve the general population in Brownsville, Texas. The applicant, in their appeal, proposed to change their application so that their unit count -- the provided a revised rent schedule which proposed 74 RAD units and 28 market units so they were going with the same unit count instead of the 34 RAD units originally proposed.

Pursuant to the administrative deficiency process, staff cannot accept these proposed changes to the application as they are material, changing the unit mix and it also changed the financing, and one of the criteria for an application to receive six points related to the pre-application participation is that the pre-application and application are participating in the same set-asides. So because of this unit mix question, they aren't able to participate in the at-risk set-aside any longer so they're
losing their pre-application points and we would be moving them to the region from the at-risk set-aside.

Because the application as submitted does not qualify for the at-risk set-aside, it does not qualify for the six points, and staff recommends denial of the appeal.

MR. GOODWIN: So moved.

MR. OXER: I was going to say are there any questions. There are apparently none. So motion by Mr. Goodwin to approve staff recommendation on item 6(b). Do I hear a second?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz.

Okay, Toni.

MS. JACKSON: Good afternoon, Board members. I am Toni Jackson and I am here on behalf of my client, Cantabria, LP to appeal the staff’s decision to remove Cantabria from the at-risk set-aside.

As was indicated, the staff has indicated only in a FAQ that there had to be all of the units moved that were going to be demolished into the application. However, it is our position that it does indicate that they all have to be moved at the same time. We have provided information showing that it has always been the intention of the housing authority to demolish all of the units, and that has been proven and provided by a letter
from the housing authority, THA's five-year plan, and a resolution for the housing authority indicating the intent to demolish.

    In the letter that we received from the E-D, as well as in the administrative deficiency, it indicated that we had provided information that there was an intent to demolish. However, on the tab where that is supposed to be checked, that was in fact checked that there was going to be demolition, and as requested from the administrative deficiency, we provided additional information that indicated demolition.

    Again, it was put in the administrative deficiency, as well as in the E-D's letter, that we had not indicated that the demolition was proposed. We did, again, as I said, check the box, we provided additional information as was asked with the administrative deficiency, and we actually have not been clear what other information we could have provided to show that demolition was going to be a part of this particular transaction. Demolition was not in the budget because the housing authority is handling the demolition themselves and the demolition is not intended to be completed until after the tax credit award. However, based on the statute and our understanding of the intention of RAD, nowhere does it indicate that the demolition has to be done any time prior
to the tax credit award or even during the application process. We simply must indicate and show that the demolition is proposed, which we have provided.

So we have also provided the additional information as requested in the administrative deficiency. We did not feel that it was a material change, and therefore, we ask that the points be reinstated.

MR. OXER: Any questions?

MS. BINGHAM ESCAREÑO: Are there folks living in the existing area that's to be demolished?

MS. JACKSON: Yes. It's called Leon Gardens and there are people living there, and so the plan was that the new construction would take place and then they would be moved and demolished at that time, and that was so that the housing authority would not have to take on responsibility of relocation funds.

MR. OXER: So essentially to protect the people that were living there, or continue to provide them service.

MS. JACKSON: That is correct.

MR. OXER: Any other questions?

MS. BINGHAM ESCAREÑO: Can I ask a question of Marni?

MR. OXER: Yes.

MS. BINGHAM ESCAREÑO: Marni, is there anything
in our rules or anything that says that the demolition has to occur prior to the award?

MS. HOLLOWAY: No, there's nothing that says it has to happen prior to. The operative question, though, for this particular item and why we took away the points and moved them out of the at-risk set-aside is not about the demolition question, it's about this unit count question. Part of the concern with reconstructions is that they're just going to rebuild a portion of those units and not all of the units. How do rest of the units are going to be reconstructed? And that's why there's this requirement in rule saying that the applicant must propose the same number of restricted units.

The Leon Gardens development is 74 units to be demolished, they proposed to construct 34 units under the RAD program. When they sent back their appeal, they changed their application significantly to propose 74 RAD units, and also as a consequence changed the financing and some other parts and pieces that are material to the application. That's why staff is recommending denial of the appeal.

MR. OXER: What were the other parts and pieces?

MS. HOLLOWAY: The financing structure, operating expenses and financing structure. The unit
MR. OXER: So essentially, tell us the numbers again, they went from so many RAD to so many market.

MS. HOLLOWAY: The application originally proposed to reconstruct 34 units under RAD, to add 58 tax credit units, and then to add ten unrestricted units. When they revised their information that they sent back, they proposed 74 RAD units, so that was all the units that were to be demolished, and 28 market rate units instead of what was originally proposed.

MR. OXER: Come on up, Toni.

MS. JACKSON: And as indicated, it was the client's understanding -- or we did not understand or did not agree that the rule indicates that it 100 percent moved at the same time because we had provided the information from the housing authority showing that there was always an intent that Leon Gardens is going to be completely demolished and moved, it was just going to be done in two phases. So in response to the administrative deficiency, they changed it to bring in all 74 units at one time, but again, it was not our understanding of the rules that it has to be all done in one phase because the rules do not state that. And there wasn't any unit mix changed and all of the units would continue to be affordable.
MR. OXER: Okay. Any other questions?

(No response.)

MR. OXER: So let me get this clear. Our point is, Toni, that the whole thing was predicated on moving part of them and then moving the rest of them later, that you were going to finance this whole deal in two stages.

MS. JACKSON: That is correct. But Leon Gardens as one application would be going in to HUD as a RAD deal. That was always the intention. And the resolution from the housing authority indicates that.

MR. OXER: Okay. Have you got anything to add to that? Do we have anything on that, Marni?

MS. HOLLOWAY: Yes. Beyond the requirement in rule and the at-risk rule about the unit count remaining the same, under the administrative deficiencies requirements for Housing Tax Credit applications it says specifically may not add any set-asides, increase the requested credit amount, revise the unit mix or adjust their self-score except in response to a direct request from the Department. We did not request that they change their unit mix, operating expenses or financing structure.

MR. OXER: All right. Thanks, Toni.

MR. SUNNY PHILIP: Executive director for the South Texas Collaborative for Housing Development which is a nonprofit entity. We are partnering with the Cameron
County Housing Authority to facilitate this change.

Not to repeat Toni's comment, our goal was to move these units to a high opportunity area which the Board has prioritized, and also to make sure that the concentration of the affordable housing is kind of put in a way to be conducive to the neighborhood and also acceptable to the neighborhood, and that's what we have attempted to do. And we have consistently stated from the beginning of the application what our whole plan was, and it would appear that staff concluded with the underwriting with that information. Then all this came up from a third party challenge and we have been reacting to that, but the question was about the demolition. From the beginning to the last information we provided, we have stated as to how the demolition will take place. Our humble understanding is it fits within the rules of all the programs.

Thank you.

MR. OXER: Okay. Thanks, Sunny.

MS. FINE: Tracey Fine with National Church Residences.

I just want to say that I read the rules, and we're in the at-risk category as well, and it is clear as day that that you have to have the replacement of one to one if you determine that you're going to tear down your property and rebuild it in another location. So for me
it's hard to understand that that interpretation was unclear. It is very clear that it's a one-time replacement.

And I did want to point out that should this project move forward, and it's under appeal, 100 percent of the at-risk category, other than the USDA set-aside, 100 percent would go to a new location, new construction. Not one single existing property would be preserved under this round in preservation and at-risk. This year marks the 30th birthday of the Tax Credit Program. TDHCA has awarded 2,200 tax credit properties. That means not one of them would have been able to move forward in this category because it wouldn't be seeking a new construction, new location.

We're losing because of a property rate issue, potentially on this, but my census tract includes my residents that are part of the property rate. If they were take that out and compare it to a new application, we could be on equal playing fields. I'm just pointing that out, it's not part of the appeal, but I think it highlights some of the challenges of the at-risk set-aside in this round.

MR. OXER: Thanks for your comments, Tracey.

Any other commentary? No requests.

Anything to summarize, Marni?
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MS. HOLLOWAY: No, sir.

MR. OXER: Okay. There's been a motion by Mr. Goodwin with respect to item 6(b) on the agenda, motion by Mr. Goodwin, second by Dr. Muñoz to approve staff recommendation which is to deny the appeal. Is that correct?

MS. HOLLOWAY: Yes.

MR. OXER: Okay. Clear to the Board. Motion by Mr. Goodwin, second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

Let's go to 6(c).

MS. HOLLOWAY: Item 6(c) is: Presentation, discussion and possible action on staff determinations regarding 10 TAC 10.101(a)(3) related to undesirable site features and 10 TAC 10.101(a)(4) related to applicant disclosure of undesirable neighborhood characteristics. We are discussing two applications today, 16200 Kirby Park Villas in San Angelo, and 16274 Rockview Manor in Fort Hancock.

MR. OXER: And boy, aren't you popular.

(General laughter.)

MS. HOLLOWAY: Wow. Can I bring them in or
what?

So the purpose of this item is to bring forth these two sites, these two applications to the Board for a determination of whether or not this site is eligible. If you do determine that this site is ineligible based on the information that we're presenting, the termination resulting from that decision is not appealable. So I wanted to make that clear.

MR. OXER: Say that again.

MS. HOLLOWAY: Okay. What we are requesting is a Board determination that these sites are ineligible, we believe these sites are ineligible, we're asking for your determination confirming that. If these sites are found ineligible, the applications will be terminated, and under our rule that termination is not appealable.

MR. OXER: Okay. 16200 Kirby Park.

MS. HOLLOWAY: 16200 Kirby Park Villas. The application is proposing a 72-unit new construction project with elderly limitation. It's located at the southwest corner of 29th Street and Martin Luther King Boulevard in San Angelo, Texas. The application has requested and received community revitalization points due to the location within a neighborhood targeted by the city. The development site is at the edge of an older neighborhood that has a combination of industrial and
residential uses, and in fact, this kind of land use is frequently a trigger for revitalization plans in urban areas.

One approach to the property is from N. Bryant Boulevard which is a major north-south artery. Close to the site N. Bryant is a divided road with mixed commercial and industrial uses. This route largely avoids the industrial uses and blight abutting the proposed development site on the other side. Approaching the property from the east on 29th Street requires traveling from N. Chadbourne Street which is characterized by multiple payday lenders, liquor stores and blight, through a deteriorating residential area and a heavy industrial corridor. Approach from Martin Luther King Dr. is characterized almost solely by industrial uses.

So across from this site just directly across the street is Terrill Manufacturing Company. This is less than 200 feet away, border to border on the property, so remember that we take measurements from the edge of the property to the edge of the property. On Friday, May 20, the date of staff inspection, there was a steady noise coming from this manufacturing facility. There are pictures in your Board book that show you what it looked like on that day.

Approximately 200 feet from the site, across
the intersection of West 29th Street and Martin Luther King Dr., is a pipe manufacturing plant serving the petroleum industry. Due to the nature of the manufacturing and the presence of multiple semi trucks parked at these plants, traffic on 29th Street would presumably be impacted as they travel from the plants to N. Bryant Boulevard which is that major artery. The development site is effectively blocked from any residential uses by manufacturing facilities.

The applicant did not disclose multiple undesirable neighborhood characteristics in their application. While they were not required to disclose schools with Improvement Required because this is an elderly limitation deal and the poverty rate is just under the limit, they should have disclosed the blight and they should have disclosed facilities within the ASTM required search distances. According to the environmental site assessment, the ASTM facilities do not require mitigation but having 38 such facilities within the search range speaks to the character of the neighborhood and its predominantly industrial land use.

Staff recommends the Board determine that the site is ineligible under 10.101(a)(3) Undesirable Site Features, due to its proximity to manufacturing facilities, and 10.101(a)(4) Undesirable Neighborhood
Characteristics, due to the blight surrounding the property.

MR. OXER: Okay. Are there any questions? We're going to take these one at a time for Board action.

MR. GOODWIN: Move approval.

MR. OXER: Motion by Mr. Goodwin.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: And second by Ms. Bingham to approve staff recommendation on application 16200. Do you folks want to speak on 16200 or the other one?

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord representing the applicant on this matter.

So we have three items of ineligibility here. Unfortunately, only one of them was actually dealt with through the administrative deficiency process. I feel like had we been able to discuss some of these others with staff, we might have worked through some of these issues, but since that was not part of the described process, we get to bring it to you and you get to hear all of this and be the final arbiter.

I believe very firmly that the determination has mischaracterized the Blackshear neighborhood of San Angelo, and further, is not consistent with the rules. I'm going to focus on the rules part, we have people from San Angelo here to talk more specifically about their
Community.

First I want to talk about the nearby industrial use. This is considered an undesirable site feature under 101(a)(3), and as staff mentioned, the Board can decide whether this is an ineligible feature. I'd like to focus on the language: It is an ineligible site if it is within 500 feet of heavy industrial or dangerous uses, such as manufacturing plants, fuel storage facilities (excluding gas stations), refinery blast zones, et cetera.

So the staff says that the development site is ineligible because it is within 500 feet of manufacturing plants. That's not the standard set forth in the rule. The standard set forth in the rule mandates ineligibility only if you're within 500 feet of heavy industrial or dangerous uses. That's the standard.

So what's heavy industrial? I spent some time looking for that definition and I gave you several, you'll find them in your Board book on page 275. But it's characterized by being capital-intensive, labor-intensive with large machines, creating large products, industrial customers. By contrast, light industry has less capital-intensive nature, less labor-intensive nature. So the staff cites these two facilities, Terrill Manufacturing and Hirschfeld Manufacturing.
Terrill, there's a picture of it on page 269 of your book. This is essentially a woodworking company, they make cabinetry and paneling. And as described in the letter, this is not a heavy industrial use. In fact, this site is zoned by the City of San Angelo as CGCH, which is general commercial, heavy commercial. That zoning category excludes heavy manufacturing, so the City of San Angelo has said this is not a site where we have heavy manufacturing. Terrill Manufacturing also isn't a dangerous use. I have provided for you evidence that Terrill Manufacturing is rated by TCEQ as having, in their words, perfect compliance that complies with the environmental regulation extremely well. So we don't think this one meets the standard of the rule.

The second facility is Hirschfeld Manufacturing. Staff this is a pipe manufacturing plant serving the petroleum industry. We understand where that confusion comes from because there are multiple Hirschfeld sites, but on this site they have their corporate headquarters and they don't manufacture pipes. They are fabricating stairs for stadiums. They have about 30 employees. A lot of their equipment is handheld. So again, we argue this is not heavy industrial, this is not a dangerous use. Again, they are zoned CGCH, not heavy manufacturing. The City of San Angelo has said this is
not heavy industrial.

So if neither of these facilities meet the definition in the rules for ineligibility, we can't use that part of the rule to declare this site ineligible.

I'd like to move to blight and then I will finish up. So blight, this is an undesirable neighborhood characteristic which is under Section 101(a)(4). This one under the rules is a little bit different. It requires the applicant to disclose if there is that characteristic and then the Board can look at mitigating factors and say, okay, we've looked at this but we don't think this is of the nature or severity that this site should be ineligible.

So with regard to blight, again, going back to the rule: the development site is located within 1,000 feet of multiple vacant structures visible from the street which have fallen into significant disrepair, overgrowth, and/or vandalism that they would commonly be regarded as blighted or abandoned. So there's your standard.

Honestly, the applicant did not disclose blight in this neighborhood because they didn't believe that the surrounding features did rise to that level of standard. One thing that is missing from your Board book is the letter from TDHCA to the applicant, dated June 16, that described the reasons for their determination of
ineligibility, but one of the things that they said was that it is bordered to the north by vacant boarded buildings and to the south by a private residential property that has a large number of vehicles stored on the lot. So those are the two instances that they notified us about in that termination letter.

The Uresti house and the Park house, again, they're in your book. Uresti is at 256 and Park is at 260 and 261. The Uresti house is occupied, it's not vandalized. Yes, it has stuff, it has stuff in the yard and on the site, but it is not vandalized and it is an occupied home. The Park house is boarded up, it is currently vacant. The pictures have no appearance of vandalism. I understand that it is currently on the market for sale.

In the June 16 letter, TDHCA staff also cited properties on MLK Drive traveling south from the site, and we addressed those in our letter.

But one of the things that I want -- there are two things that I want you to consider and they are both going to the issue of mitigation. One is that this city, San Angelo, has a tremendous community revitalization plan, they have been working on eliminating blight and have been doing so very successfully for more than ten years. They have plans for all of these properties, and
you're going to hear about that, and that mitigation can allow you to find this site acceptable.

The second thing is to note the tremendous commercial growth in the area, including much new construction. Again, if you look at those pictures on pages 254 to 270, you will see that there is a Walmart, McAlister's Deli, a credit union, dental office, medical office, gas station, all sorts of new facilities where there will be sidewalks, crosswalks, accessibility for these residents. This is a growing, revitalizing area, this is not an area where a few instances of blight should be considered to cause this to be ineligible.

Finally, on the environmental, I am going to defer to the man who conducted the environmental study, but want to again give you the rule basis. There are two issues here. One is in the rule it says must disclose if you have facilities within the ASTM required distance that are listed on one of four databases. So staff gave us an administrative deficiency and said, We're looking at your report and it says that you have these facilities, why didn't you disclose them? The simple answer is because your rule doesn't require it. The things that were in our study were not the things that are in your rule that require disclosure. So that's another area where ineligibility cannot be determined because none of the
items listed in the environmental study meet that.

So staff has also said, Well, we're concerned about the sheer number of facilities that were listed in the environmental study. So that goes to a rule that says that TDHCA can deem a site unacceptable if there is exposure to an environmental factor that may adversely affect the health and safety of the residents. Again, we don't meet that standard, which is what you're going to hear from the environmental consultant. None of these items listed present an environmental hazard of safety concern to any of these residents.

In short -- and longer than my three minutes -- the rules give us very prescribed reasons for declaring a site ineligible and none of the characteristics of this site meet those rules. Thank you.

MR. OXER: Thanks, Cynthia.

MR. OSBOURN: Good afternoon. Michael Osbourn, Kaw Valley Engineering. I'm a registered professional engineer in the State of Texas, and my firm did perform the environmental study for the site.

Generally, in order to understand the concerns raised by staff, one needs to understand the basis, and I don't want to get too deep into what constitutes an environmental report, but at the end of the day, environmental Phase I reports are developed in accordance
with ASTM Method 1527. You guys have seen it a hundred time, you've seen these reports probably thousands of times over the years. This method outlines multiple elements that will be evaluated in the Phase I evaluation of the site. Not only do you look at the site and go through things, but one of the multiple elements you have to deal with are what are known as environmental database lists. Now, just because a site is on an environmental database list doesn't mean it's a bad site.

As we look back to the history of environmental issues, nothing was registered, nothing was in place and nobody knew what was where. As we've progressed since early 1990s when this all became part of the ongoing process of land development, we have begun requiring, and federal, state and local governments and agencies have begun requiring various facilities to be registered. The ones we all thing of the most are underground storage tanks, leaking underground storage tanks, things of those natures. It can also include major hazardous waste sites, or they can be as minimal as a Dollar Tree store that generates large volumes of trash, the boxes going out the back, and they're required to list themselves on a RCRA list, basically. So the lists themselves are highly widespread in the types of facilities that may or may not be on a list.
When you're near a commercial district, such as this site is -- which is something that I think this Board looks to see come together -- and when we look at connectivity to Walgreen's, Walmart, Dollar Tree, local health facilities, you're going to be near a more heavy traveled corridor, i.e., the main road that comes through the town. With that you will have had older facilities that may have been cleaned up, you will have some commercial facilities, so your list could be very broad that is shown within an environmental report, i.e., the 38 sites defined.

Let's talk about what those 38 sites are and that will kind of bring me to my end. Nineteen of them were affiliated with gas station uses past or present. Of those 19, all have been cleaned up or removed or taken out and certified by the state as not an issue, but because they had been a gas station historically, it has to show up on a list. It is our job as the environmental engineer to confirm that those sites are no longer an issue to the region. Of those 19 sites, only four remain active: Walmart, Murphy Oil, Star Fuel and Stripes. And I think everybody has probably gone to a Stripes and gotten a soda or at least filled up with gas in the state of Texas at one point or another. All four of those sites are either cross gradient or down gradient from the site which means
if they even had an issue -- which they've had none, they're in full compliance -- it would not impact the site because any groundwater issues that may occur there would go away from the site.

There are five historical sites that are known as historical automotive repair. All five of them are, again, cross gradient or down gradient from the site, so had they had a problem, which the list defines they did not, there's no recorded incidents with any of the five historical sites, they're just sites that had to be registered. So with that, they're on the list, but again, even though no issues happened, had they happened historically, they would be cross gradient or down gradient, no impact to the site.

The balance of the sites are RCRAs. RCRAs have a wide range of uses, and yes, Terrill, Hirschfeld are on those lists because they do generate some waste, but that waste is controlled. And as you've heard, Terrill is in full compliance and has never had an issue that has been reported to or a part of TDHCA records. Other things on that list are Walgreen's, Walmart, Dollar Tree. If we are going to start denying a site's adequacy due to these sites being in the proximity which are usually good points for the site, I don't know where we go from here.

At the end of the day, I want to point out that
the environmental report is there to identify sites, evaluate the impact of those sites to the specific project site, and then have an engineer's evaluation of is there any issues with any of these sites that are identified. The misuse of this type of a report to characterize a site is not the intent of the report. That's a full mischaracterization of the project site by a report that has no intent to be used to determine whether a site is eligible in that regard or not. It's there to say are there environmental issues or not. Our report said there wasn't, no one has denied that, and it's been clear the whole time there are no environmental issues associated with this site.

I thank you for your time and I'm here to answer any questions.

MR. OXER: Thank you.

MR. OSBOURN: Thank you very much, sir.

MR. OXER: Next.

MS. MEYERS: My name is Craig Meyers. I wear several hats because those of you who have been around a
while remember that when I came before I would come with
20 to 40 very diverse folks wearing yellow shirts that
were down here five times getting approval of the Noah
Project which is a part of what's going on here, and
that's one of the reasons that it's relevant.

For ten years, I'm a Presbyterian pastor, I'm
an officer in NAACP, and the MLK Association, and hands-on
involvement in planning and implementing the
revitalization program for the past ten years in San
Angelo. And as I read what we had -- I don't know if you
have the same thing -- when I read the description of the
program here and the area, I have to, with all due respect
to whoever did the study, that this is a very cursory and
inaccurate characterization and it does so in
generalizations. The specifics were just given to you
about some of the problems that are really not problems.

But when you use the term "blight," ten years
ago, eleven years ago, the City of San Angelo designated
four areas as blighted in San Angelo based on housing,
based upon infrastructure, based upon crime, based upon
the environment that was there. In the revitalization
program, all four of those as neighborhood blights have
been removed by granting agencies who say they are no
longer blighted. One of the reasons we quit coming down
here was because the Noah Project got approved. Those of
you who were down here at that time got this packet of information that describes a process that is really unequaled anywhere in the state of Texas because we don't put projects into the middle of blighted areas, we remove the entire blight as much as possible.

Just a couple of statistics to give you an evaluation, because Chadbourne was said to have been in the middle of a declining, deteriorating housing area. That's simply not true. Deteriorating is a sort of dynamic characteristic. This is what has happened. In the past ten years what used to have 70 percent substandard housing visual from the sidewalk and from the street is now less than 20 percent, which is not blight. I said 70 percent to 20 percent. That is not a deteriorating neighborhood, that is a developing neighborhood, and there's no other way to characterize it.

So whoever drove through there and looked around, you will find, in any neighborhood that is not a pristine new neighborhood, a pocket of houses over here, you'll find a building over here that is not attractive. That is not blight, that is something that has been and is being corrected. In that process, tens of millions of pounds of solid waste were removed, hundreds of sites that were overgrown, filled with trash have been leveled. New houses, rehabilitation of apartment complexes, new
apartment complexes, new houses, rehabs, major repairs have gone on.

And I'd just like to add one simple thing with my time. The idea of having these kind of projects is to improve the quality of life of the people who are going into them. There is no danger here, one, that the project will deteriorate because of its environment because this is a continuing progress that has gone to 26th Street with removal of the bad housing and is going, as it goes to 29th Street, going to continue to absorb a lot of these buildings that they're talking about because the city has just declared that that is going to be rezoned as a strictly commercial area. So things that are grandfathered and that will be there for a while are in the process of being a part of the project.

Also, though, one of the things, I have been hands-on in the houses of the people in this neighborhood for ten years. I have seen them, I have talked to them, and one of the real problems is that the people who most need low income elderly housing do not go there because they have been treated by society for so long that they don't trust moving out of their neighborhoods, away from their churches, away from their friends, even if they're living in substandard houses. And most of the houses that are substandard still are still there because they we
don't want to displace elderly people who would rather die there than move out of their neighborhood.

This is one of the few of these kind of projects that is going to be in a safe growing area, but also is in a neighborhood where people who need it most will feel free to apply for being here. And the characterization of blight, of deteriorating residential areas, and the last one is the characterization of Chadbourne corridor as being characterized by things, yes, there are liquor stores, there are some bars, there are some payday loans, but it is a 30-block area connecting downtown to the city limits of San Angelo, and in that area it's characterized by churches, by new buildings of chain food places, by light industry, by a new bank that's been put in there because Texas Bank trusts this is a growing area.

And on the other hand, on two sides this is the only one of these kind of facilities where the people will be able by foot traffic to get every grocery, retail, medical, pharmaceutical service that they need without getting on a bus and going 30 minutes to downtown and back, when and if the buses run in that area. The people who move in here are going to be people who benefit greatly and there is no danger to their quality of life.

Thank you. I'll answer any questions if you
have any.

MR. OXER: Any questions for Mr. Meyers? And if you're talking about a church next to a liquor store, next to an elementary school, next to an office park, sounds like Houston, actually.

(General laughter.)

MR. MEYERS: And I think that most of those, our zoning has kept that from happening.

MR. OXER: Which I compliment you for that.

MR. MEYERS: Thank you.

MR. OXER: Okay. Hard clock here, folks, we're running short. And as a comment to everybody, because of the travel logistics today, we're running potentially short of losing a quorum, so I'm going to ask everybody to be courteous. Make your point. We want to give everybody an opportunity. We've basically got to get going here.

MR. SALAS: I'm Bob Salas. I am the director of Neighborhood and Family Services for the City of San Angelo.

And I've got to tell you I thought this project was a slam dunk. It's a perfect location for the elderly apartment complex. It's got shopping, medical, dental, restaurants, banks, all within walking distance. Needles to say, the city leadership is a little dismayed and a little concerned that this project is being put at risk.
And I won't repeat everything Mr. Meyers said, he kind of stole my thunder, but let me highlight a couple of things that the city is doing. We fixed the zoning. In fact, there's a section there that's going to be designated a neighborhood center designation which really means that we'll have only small scale retail type commercials uses, and those are geared for immediate neighborhoods.

We're completely reconstructing MLK which is right on the east side, bordering that lot there. We're adding sidewalks to help integrate the neighborhood. In fact, we're just about to let out the contract as we speak. We've vision created an art district with the old Chicken Farm Art Center which is just down the street. We're going to initiate code compliance blitzes. We're going to go in there and basically ensure that those properties are in compliance, either voluntarily or involuntarily.

We believe that the staff recommendation to disqualify it is really kind of shortsighted. Thanks to TRZ, that area is booming and we want to take advantage of that growth. Many of those blighted buildings they're talking about, they're going to be sold, they're going to be bought, they're going to be demolished and new businesses will go in there. In fact, Walmart offered to
buy several of those buildings but they're holding back
for some higher prices and they're probably going to get
them.

We fully expect that the market force will take
over, and that's how neighborhood revitalization works and
it's working in San Angelo. And I'm just hoping that
before you make a decision, come visit us and we'll show
you what we're talking about. I've worked with Marni and
her staff in the past. They're highly talented
professionals, but in this case I think they got it wrong.

Thank you.

MR. OXER: Thanks for your comments.
You won't be able to do that unless there's
enough for everybody and it has to be posted in the book.

MR. HOLDEN: Well, this is in your book.

MR. OXER: Okay. If it's in the book, then
we've got it.

MR. HOLDEN: It's just larger.

MR. OXER: That's all right. If it's in the
book, then you can leave them, but we've got that.

MR. HOLDEN: My name is Paul Holden.

MR. OXER: Welcome back.

MR. HOLDEN: Thank you. I'm with Zimmerman
Properties, and I'm the guy who found this site about a
year ago, and I've been working with the City of San
Angelo ever since and they've been fantastic to work with.

Now, I've been catching a lot of heat about the guy who found this site, however, when I went in and looked at it, it was obvious this may be one of the best sites for seniors that I have come across, and there's one simple reason for it is that everything is moving in. We have new development that's been there for less than a year and a half, and we've got everything within walking distance for the seniors. You have a health facility that's part of the larger hospital, you've got a Walmart, you've got a Walgreen's, you've got some eating establishments, McAlister's Deli, shopping, a dental clinic, all within walking distance for older people.

And we have taken this site and turned it towards the commercial that's come in there that's new, turned our back on MLK street and took our building as far to the west as we possibly could. We're also putting sidewalks in that go down to the stoplight that goes across 29th Street and there will a thing where you push the button and then you can walk across the street being safe. And that is the thing that we looked for. This has all the elements that this program looks for to be successful.

And the Hirschfeld property across the street, I took the time to go into the property and visit with
them, talked to their office manager who was just a sweetheart. She gave me a tour of the whole facility, as well as their office buildings there, and I even got a ball cap on the way out. But their manufacturing, what they build is small. Those staircases are maximum of ten feet, that's it. Five trucks a day come in and out, and they're not all semi tractor trailers.

The thing that I really want to stress to you is that during the time that I've spent at city council, I've had more ladies come up to me that are elderly people that have said, Mr. Holden, I live over on Chadbourne Street -- which Chadbourne is at least 1,500 feet away from this site, 3-1/2 blocks away -- and they said, We live over there, we've lived there for years, and what you're building we would love to come in it because our houses are old, we rent some of them, they don't take care of them, blah-blah-blah.

Mr. Chairman and Board members, I can't go back and tell these ladies that they can't have their housing in a good safe location. I'm asking you to reconsider your earlier vote because these ladies are depending on us.

MR. OXER: Was there an earlier vote?

MR. IRVINE: No. There's only been a motion.

MR. OXER: There's only been a motion, there's
no vote.

    MR. HOLDEN:  Well, your earlier motion then.

I'm sorry.

    But these ladies are depending on us and they
live in substandard housing and we need to do something to
help these ladies out.

    MR. OXER:  Understood.  Just so everybody
knows, procedurally for any item, we'll hear the item from
staff, there has to be a motion to consider.  Once that
motion is there, then the commentary proceeds, and then
there's the vote.  But there's been no vote on this item
yet, Mr. Holden, to be clear.

    MR. HOLDEN:  Thank you very much.  Any
questions I'll be happy to answer.

    MR. OXER:  Any questions?

    (No response.)

    MR. OXER:  Anybody else want to speak on this
one?  Peggy, have you got something to add in the record?

    MS. HENDERSON:  Peggy Henderson, TDHCA,
registering opinion for Jason Modglin from Representative
Drew Darby's office for project 16200, Kirby Park Villas,
against staff recommendation.

    MR. OXER:  Okay.  It was against staff
recommendation.  Come on, Marni.  And the staff
recommendation is to deny the appeal.
MS. HOLLOWAY: is to find the site ineligible.

MR. OXER: To find it ineligible.

Representative Darby's office is asking us to find it eligible. On the current motion as Mr. Goodwin has moved and Ms. Bingham has seconded, approving that motion would find it ineligible.

MS. HOLLOWAY: Yes, it would.

MR. OXER: Do either one of you want to reconsider that?

MS. BINGHAM ESCAREÑO: I do. I would like to withdraw my second.

MR. OXER: Mr. Goodwin, does your motion stand?

MR. GOODWIN: My motion stands.

MR. OXER: Okay. His motion stands. Do I hear a second?

DR. MUÑOZ: You know, Marni, reading the description that you've prepared and listening to the people that live there, it's like we're talking about two entirely different communities.

MS. HOLLOWAY: I understand.

DR. MUÑOZ: It's hard to reconcile the undesirable characteristics described here. I get it, the humming from the manufacturing plant, and what-have-you within 500 feet, I see the photographs, and then what's being represented as Shangri-la in San Angelo, I mean,
it's hard to see that much development and benefit and
attractability could have been overlooked.

    MS. HOLLOWAY: And I will tell you that I ate
lunch in that Walmart parking lot, I'm the one that went
and did the site visit. The picture that you have that
has the legend on it, Bryant Boulevard is this street,
here is the Walmart, here's all the commercial
development, and it's there. There's a gas station,
there's a drugstore, there's a Walmart, there's a deli,
all of those things are there over here. This is the
proposed development site. This is industrial, this is
blight, this is blight, based on this picture that was
just handed to you and that's in your Board book.

    So yes, there is development going on in the
area, it is along that Bryant Boulevard corridor, I full
acknowledge that. The concern is the industrial uses that
are on the other side of the property and the condition of
the two properties north and south.

    MS. BINGHAM ESCAREÑO: But Marni, so it looks
like to me -- I'm going to hold this, it's in our Board
book but I'm going to hold it up here -- it looks like the
planned entrance will be off of 29th.

    MS. HOLLOWAY: Yes, it is. But what's
happening is that Terrill Manufacturing on the other side
of MLK is right across the street from the edge of the
site.

MS. BINGHAM ESCAREÑO: Okay. I guess I'm looking at all of like the stuff that is desirable just for right now, like you said, the strip center and the Walmart and stuff. It looks like the entrance will be right where the nice strip center is with the fingernail place.

MS. HOLLOWAY: There's a nail place in it, yes. Our rule does not speak to where the entrance is to the property, it speaks to proximity.

DR. MUÑOZ: Marni, is that the administrative code that says about 500 feet from industrial?

MS. HOLLOWAY: Yes.

DR. MUÑOZ: Is that what you're saying about Terrill Cabinet Manufacturing?

MS. HOLLOWAY: Because Terrill is just right across the street. And then Hirschfeld, which granted, I didn't know anything about manufacturing staircases, what I saw when I was there was storage yards with big racks with pipes. So are both within close proximity to this site, not on the side where the Walmart is, not on the side where the commercial development is, on the other side.

DR. MUÑOZ: Doesn't make a difference what side it's on, it's the distance and proximity to some part of
the development?

MS. HOLLOWAY: Yes.

MR. OXER: Be patient, everybody. We're grinding here.

So Marni, with respect to the heavy industrial and the, quote, blight and heavy industrial, I take Mr. Osbourn's argument at face value because I happen to know a lot about the environmental side of all of this. That's not an issue, I take it.

MS. HOLLOWAY: Yes. The environmental site assessment says that no mitigation is required for any of those listed facilities.

MR. OXER: Right.

MS. HOLLOWAY: Generally, when we're looking at an ESA for a site, there may be a few listed, and yes, there are Walgreen's and Dollar Stores always trigger those kinds of things. We rarely see that many listed for one site, that was the concern that we were bringing up.

MR. OXER: And that's principally the solid waste that they produce in terms of boxes and packing matter that goes out the back into the dumpster.

MS. HOLLOWAY: For those commercial facilities.

Yes, sir.

DR. MUÑOZ: And so it's 10.101(a)(3)(C) ineligible because it's within 500 feet of a manufacturing
plant.

MS. HOLLOWAY: Yes.

DR. MUÑOZ: Manufacturing meaning heavy manufacturing, heavy industrial.

MR. IRVINE: If I could just chime in and cut to the chase.

MR. OXER: Please.

MR. IRVINE: I think that the testimony has clarified that this would not be what you would commonly regard as heavy industrial, despite the appearance and the way that it was disclosed. That's what they're representing.

MR. OXER: And that's one of the reasons we have these clarifications.

Quick question: Where did the pipes come from?

MR. HOLDEN: They're for the railing on the handrails for the stairs.

MR. OXER: Okay. Big pipes like that?

MS. HOLLOWAY: If you'll look at the Board item -- well, they don't really show. Directly behind the Board item in the supporting information, there's a shot of a couple of the Hirschfeld facilities, they actually cover two different blocks.

MR. OXER: I can see that they cover the blocks, but that's still not heavy industrial in my mind,
aside and apart from the definition.

Let's see, this one picture right here, I think I see the one that you're talking about, Marni. This is not, Mr. Osbourn, this is like a pipe yard for drilling. I can see what she's talking about.

MS. HOLLOWAY: And the picture right below it is the front part of that property.

MR. OXER: Right. And clearly this is not associated with manufacturing stairs, so my question is --

MR. HOLDEN: (Speaking from audience.) Mr. Oxer.

MR. OXER: You can't do it from there, you have to come up here. Come up and say who you are again just for the record so Nancy can put the target on you.


Now, the other Hirschfeld facility which is across down south of Bryant, you don't see it on your maps there but that facility is over 100 acres and they do use piping down there. They don't manufacture the piping but they do things with it. That could have been a storage pipe because this area they do store items but they do not build with it.

MR. OXER: Me looking at it, it looks just like a lay-down yard right there, but everybody has to make their own decision.
MR. HOLDEN: They don't do anything with pipe there. They store pipe for the other facility but that would be the extent they're using that size of pipe.

MR. OXER: Okay. Thank you for your clarifications.

Okay. Mr. Goodwin's motion stands. Do I hear a second? Absent a second, we'll have to have another motion. Don't everybody jump up and knock us out first. Okay?

(General laughter.)

MS. BINGHAM ESCAREÑO: I'll move to deny staff's recommendation to make Kirby Park Villas ineligible due to undesirable neighborhood characteristics.

MR. OXER: And for the record, based on the proximity of desirable things, that we've all identified here that there are a lot of good things associated with this site. Is that fair?

MS. BINGHAM ESCAREÑO: yes.

MR. IRVINE: Well, because it's in a rule that goes to the issue of how undesirable features are addressed, don't you really need to conclude based on the testimony, both with regard to the characterization of the industry, and also, as I understood it, the plans to address the perceived blighted structures?
MS. BINGHAM ESCAREÑO: I'll amend my motion to include based on the characterization of the industry that it does not appear to be heavy industrial, and of the intent to --

MR. OXER: The ongoing efforts to improve.

MS. BINGHAM ESCAREÑO: There you go -- the ongoing efforts to improve the identified blighted areas.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Does anybody else want to say anything else?

(No response.)

MR. OXER: Good plan.

Motion by Ms. Bingham, second by Dr. Muñoz to deny staff recommendation to declare this site ineligible. Is that a correct statement?

MR. IRVINE: You're basically finding that it's eligible.

MR. OXER: We're saying they get to go with this one. Okay?

So that being the case, those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none. I heard everybody vote.
All right. We're running slack on the clock.

Congratulations, folks. Hey, when we come out to San Angelo, we want to see something nice around there.

MS. BINGHAM ESCAREÑO: Real pretty.

MR. OXER: By the way, tell Rob Junell, my friend, hello.

Okay, do it, Marni.

MS. HOLLOWAY: Application 16274 Rockview Manor in Fort Hancock. There is a letter and survey, it's a two-sided piece that was out on the table and I put it on the dais for you earlier. Based on the letter from the superintendent that indicates that the elementary school has improved and is now meeting standard, staff is withdrawing the part of the recommendation that's about the schools. We still have a railroad issue to deal with, but the schools, we're fine that they have done some good work and they're going to meet standard again.

So per 10.101(a)(3)(B) Undesirable Site Features, a site will be found ineligible if it is located within 100 feet of active railroad tracks unless the applicant provides evidence that the city or community has adopted a railroad quiet zone or the railroad in question is commuter or light rail.

In a notice of administrative deficiency, staff asked the question, it came out of the ESA, the ESA said:
A noise study is recommended due to the proximity of the subject site to railroads; subject site is 50 feet from Southern Pacific Railroad. And we requested evidence from a reliable third party source of the distance from the nearest boundary of the development site to the railroad.

In response, the applicant submitted a letter from the ESA provider revising the ESA, and referring to a map provided by the applicant. There was no information provided at the time regarding the reason for revision to the environmental site assessment, nor was there any information to indicate that a reliable third party source provided the measurement. Since that time, staff has contacted the surveyor who provided the survey included in the application to verify the distance between the railroad tracks and the site.

In response to our inquiry, the surveyor sent a new survey with a revised measurement of 106.5 feet from the centerline of the track to the development site boundary. That's the survey that you have hard copy of. The surveyor has not responded to our followup question seeking to verify that this revision reflects a measurement taken at the site rather than an estimate.

In order to assure that we are presenting accurate information, a staff member from our El Paso field office went to Fort Hancock on July 12 to verify the
measurements. Working with the commonly accepted definition of railroad track, he found the measurement from the centerline to the edge of the subgrade under the track to range from 8-1/2 feet to 14-1/2 feet. So if the survey says 106-1/2 but then the distance to the subgrade is eight, that means you take that eight out of that 106 and then you're down below 100, and then it goes all the way down to 14-1/2 feet. Even at its narrowest, the subgrade extends two feet further than the measurement indicated on the revised survey, rendering the site ineligible under undesirable site features.

And staff recommends that the Board determine the site is ineligible under 10.101(a)(3) Undesirable Site Features due to that railroad, proximity to that railroad.

MR. OXER: So is it defined in our rule that it's measured to the center of the railroad?

MS. HOLLOWAY: It says 100 feet from existing railroad tracks.

MR. OXER: Those railroad tracks are 4 feet, 8-1/2 inches wide.

MS. HOLLOWAY: Google is our friend, and if you're trying to figure out exactly what to measure to and from because our rule doesn't really specify, it just says 100 feet from existing railroad tracks, what we found is -- and this is just putting it up on Google, this is
the first thing you get: The track on a railway or railroad, also known as a permanent way, is the structure consisting of the rails, fasteners, railroad ties and ballast, plus the underlying subgrade.

MS. BINGHAM ESCAREÑO: What do you think about that, Engineer?

(General laughter.)

MR. OXER: Actually, from an engineering standpoint, the railroad consists of all that but the railway consists of the right of way. It says the railroad track.

MS. HOLLOWAY: The railroad track, and just put "railroad track" in Google and this is what we came up with because we're not finding a better definition.

This is an item that we will be working on, actually this entire undesirable site and neighborhood is something we're working on really hard for the next round of rules.

MR. OXER: Well, as has been the case in a number of the cases that have arisen here this meeting and last, I suspect that there's going to be continued staff exploitation of opportunities to define those definitions so that we don't get into this game anymore.

MS. HOLLOWAY: Exactly.

MR. OXER: And an elevation on a railroad
track, basically depending on where it is with respect to
the terrain that it's on, will have that subgrade can go
out any number of feet. It's a wild difference.

MS. HOLLOWAY: Well, and even on this site,
with the measurements that were sent back to us, the
subgrade ranged from 8-1/2 feet to 14-1/2 feet out.

MR. OXER: So this is a commentary on something
to do in the future, but none of those are a fixed point
or definable as the centerline would be. So the
centerline of a railway would be fixed wherever it is, as
opposed to variable if the railway includes all that all
the way to the ballast down to the terrain that it's built
up on to cross. So that's why I'm suggesting that we need
to refine that rule.

MS. HOLLOWAY: Yes.

MR. OXER: But under the existing rule.

MS. HOLLOWAY: Under the existing rule.

MR. OXER: Any other questions of Ms. Holloway?

(No response.)

MR. OXER: We'll need a motion to consider on
this. So your position is that it is ineligible as a
consequence of the proximity.

MS. HOLLOWAY: Yes. Staff recommends that the
Board determine this site is ineligible.

MR. OXER: Is ineligible.
MS. BINGHAM ESCAREÑO: Mr. Chair, I know we were within four feet at some point in time when you were doing your calculation. Just for giggles, if you made the very middle of the train tracks, would it have satisfied it?

MR. IRVINE: It would be just outside.

MS. BINGHAM ESCAREÑO: Okay. Just outside.

MS. HOLLOWAY: So the revised survey that we've received has it at 106-1/2 feet. We have not been able to verify that that is an actual measurement. The conversation that we had with the surveyor was: Well, we usually do it this way. That revision, we don't know if someone actually went back out there and laid that tape down.

MR. GOODWIN: And that looks like on the survey it's measured from the middle of the railroad track?

MS. HOLLOWAY: Yes.

MR. OXER: It's 106-1/2 to the middle.

MR. GOODWIN: So if you measured it from one side, you're actually a little further away.

MR. OXER: Or you're a little closer depending upon.

MS. HOLLOWAY: Or you're a little closer which side you measure from.

MR. OXER: Depends on which side you're on.
MR. GOODWIN: I'm talking about on the outside of the track, the inside part of the track that would reach to the outside if you're moving south.

MR. OXER: Go ahead, Marni.

MS. HOLLOWAY: I have nothing.

MR. OXER: I know we're getting a little giddy up here. A lack of calories will do that to you. What we need, actually, is a half bathroom in the middle of this railroad.

MS. BINGHAM ESCAREÑO: Flat.

MR. OXER: This is a flat so we can put a half bathroom in the middle of the railroad. So how narrow would a census-designated place have to be to fit within a railroad.

(General laughter.)

MR. OXER: All right. Go ahead. Sorry.

MS. HOLLOWAY: I have nothing further.

MR. IRVINE: So basically, it's just over 100 feet to the middle of the railroad and it's just under 100 feet to the edge of the subgrade.

MR. OXER: And the edge of the subgrade, since it's as much as 14 feet in there, that subgrade could be seven feet.

MS. HOLLOWAY: The measurements that we have is anywhere from 8-1/2 to 14.
MR. OXER: So if it was 14, then to the edge of
the subgrade -- the width of the subgrade is 14. Is that
what they're saying? So it could be from the centerline
to the subgrade could be 14.

MS. HOLLOWAY: Right.

MR. OXER: Okay. That's different.

Anybody want to speak up? What we need to do
is carve off a piece of the property line that's just like
four feet off of that -- I know you can't comment.

So we have to have a motion to consider. We
can't do nothing, we have to do something.

DR. MUÑOZ: Move staff recommendation.

MS. BINGHAM ESCAREÑO: I'll second.

MR. OXER: Move staff recommendation which will
make it ineligible.

MS. BINGHAM ESCAREÑO: I know. We'll hear
comment. Right?

MS. HOLLOWAY: Which would make the site
ineligible.

MR. OXER: Okay. Motion by Dr. Muñoz, second
by Ms. Bingham to approve staff recommendation which would
make the site ineligible.

MS. HOLLOWAY: Yes.

MR. OXER: All right. Cynthia.

MS. BAST: You'll be happy to know this is the
last time you'll hear from me today.

MR. OXER: You won't be surprised if I don't agree with you or don't believe that.

MS. BAST: The rules have been laid out there very nicely. The rules is you're ineligible if you're located within 100 feet of -- here's the actual language -- "active railroad tracks." That's what we're talking about. The rule also says that the distances are to be measured from the nearest boundary of the site to the undesirable feature. So what's the undesirable feature of a railroad way or active railroad tracks?

The applicant here has always measured to the closest metal rail. That's that makes the noise when the train is propelling down the track. So that is in its mind what could be considered an undesirable feature. So if you look at that and go 106.5 feet to the middle line of the track -- and Mr. Oxer, you're right, 4, 8-1/2 between -- then you can see that we'd be at 104 if we went to the closest metal track.

The applicant also would acknowledge that they know that this is close to a railroad track, and he's here to talk to you a little bit about the characteristics of this community, Fort Hancock. They intentionally designed this site with that proximity in mind, and I would call your attention to the site plan which is in your book. It
is, I believe, Exhibit A.

MR. OXER: What page, Cynthia, do you know?

MS. BAST: I'm sorry, I don't have the page.

It's Exhibit A to my letter.

MS. BINGHAM ESCAREÑO: Page 294.

MS. BAST: Thank you.

MR. OXER: Okay, got it.

MS. BAST: So what you're seeing here is there's an angle on the site here, this is the closest point, this is the point which would be either 106-1/2 to the center of the railway or 104 to the metal. You see over here that we're farther away, it's approximately 150 feet away over here. Intentionally, there has been a ponding area established here to provide additional buffer on this site, again recognizing the proximity. So acknowledging that this is close within the rule, but nonetheless, intentionally designed to fit within the rule.

I would note that the applicant has acknowledged that they will follow the recommendations of the environmental professional, they will conduct a noise study, they will implement any mitigation that's required. If TDHCA wants additional mitigation on this matter, they're happy to consider that. But that is the position that they have is that it should be from the closest point.
to the metal track because we are talking in this rule about an active railroad track.

I also did some looking for definitions, I spent some time with the Federal Railroad Administration's rules and website, and there are places where they talk about tracks and they talk about metal and welding, but I didn't find the be-all and end-all definition, but I do think that it is a logical definition that can be accepted for purposes of this rule.

MR. OXER: Any questions for Cynthia? As represented here on the diagram, the ponding area, basically the flood control pond does add additional buffering and it's considerably farther away from the railroad track. Actually, it seems like a good plan, just looking at it from a site development concept.

DR. MUÑOZ: And our rule requires 100 feet?

MS. BAST: To be ineligible it has to be 100 feet from an active railroad track and the measurement is from the nearest boundary of the development site to the undesirable feature, is your phrase. So what's the undesirable feature?

DR. MUÑOZ: And you're arguing that begins where?

MS. BAST: That the metal rail is the undesirable feature to which we measure.
DR. MUÑOZ: Why do you keep making the point of active railroad?

MS. BAST: Because that's just the language.

DR. MUÑOZ: This is an active. Right?

MS. BAST: It is an active railroad track.

MR. OXER: Because if it was an abandoned railroad inactive, then we wouldn't be having this conversation.

MS. BAST: I may be making a different argument. I'm just trying to really, hopefully as you can hear today, focus on the rules and try to look at the language and say what's the language say and where should we be.

MR. GOODWIN: And our rule says track.

MS. BINGHAM ESCAREÑO: Track. Yes, sir.

MR. ECCLES: I'm going to chime in with Texas Transportation Code, Title 5, Railroads, Subtitle B, State Rail Facilities, Subchapter A, Section 91.001, Definition of Track Work, which includes track, track beds, track bed prep, ties, rail fasteners, slabs, rails, emergency crossovers, setup tracks, storage tracks, drains, fences, ballasts, switches, bridges and structures. But you'll notice that track work encompasses track, so that metal thing that the train rides on is passively defined through Texas Code as being that metal line. So this on Cynthia
Bast batting a thousand day.

(General laughter.)

MR. LOPEZ: Roy Lopez, and I represent the applicant, Ike Monty.

As Cynthia said, we did read the rules when we chose this site and we read the rules as being the 100 feet marker was to the active railroad tracks, so we took that to mean the tracks. We looked into the width of the tracks, 4 feet, 8-1/2 inches, so we did comply with that. We realized it was close to a railroad so we did put mitigation efforts and we put the ponding area. There's also parking that separates the buildings thereafter, so most of these buildings are 150-170 feet away from the railway. So we do have ponding, we're going to have trees in that area.

Part of the construction efforts we're also incorporating in here is that we're going to have six-inch walls with soundboard on the side of the railway. So all these are mitigation efforts that we were aware of, trying to make sure the residents lived in a nice community that had quiet so they had some solitude even when the train came by. So we did take all that into consideration.

The survey that was provided that Marni mentioned, we did call the engineer and ask him to provide us a survey because the original survey didn't have the
distance from the nearest boundary line to the centerline of the railway. So we asked him please send us a revised survey and give us that dimension, and that's when he came back and provided the dimension 106-1/2 feet from the nearest boundary line to the centerline of the rail. And he provided additional dimensions as the site goes further away. So that's what we did when we were asked to provide third party documentation. It is from the surveyor, he did provide that and that's what you have in your Board book.

MR. OXER: The centerline of the railroad would be easily definable and not unambiguous -- or would be unambiguous as opposed to the lower edge of the bed would be highly variable, there's no way to define that. I mean, there's a way to define it but it would be all over the place.

MR. LOPEZ: And obviously we did quite a bit of Googling on railways also and we found some that the bed only extends five feet from the center or ten feet from the center, so there's a lot of different dimensions for that bed.

So at this time, again, we did take into consideration the rule that said active railroad tracks, so we measured from the middle of the tracks.

MR. OXER: Thanks.
Robbye.

MS. MEYER: (Speaking from audience.) I'm only here if you need me.

MR. OXER: That's a good answer.

MR. BOWLING: Mr. Chairman, I'd like to speak.

MR. OXER: Bobby.

MR. BOWLING: Bobby Bowling, for the record.

Full disclosure, we're the project right behind this in XIII Rural.

There's a couple of things that haven't been mentioned here. First of all, you're very astute, Mr. Chairman, I got what you were saying about how to draw the boundary line. It's important to note the applicant owns this parcel of land. That can be reconfigured next year and resubmitted. It's a high scoring deal. They can get within your rules next year by redrawing their boundary line. I don't know why they didn't. We've had this instance before with junkyards or railroads or things, all of us developers, and we usually try to err on more than six feet or four feet or two feet or negative eight feet, however you look at it. I mean, you go with 20 feet, he owns the land, he can draw the boundary wherever he wants.

I think it's the right of way is what I would be afraid of. When we're afraid of a junkyard, I don't measure the junk car, I go to the boundary of the junkyard
and then go whatever it is, 300 feet.

MR. OXER: And that was my point on making the right of way for the railroad as opposed to the rail itself.

MR. BOWLING: And then two other points. Fort Hancock is 55 miles from El Paso, it's not a population center. It's a shrinking community if you look at the census data. They've got problems that aren't being addressed here that are in the backup about the market study and the market analyst drew a 5,000 square mile market area and then he put revision papers in the Board book that he doesn't even meet the underwriting criterion for drawing from the community because it's so small and it's so far off. I mean, this is way outside of any population areas in our county. It's not even in El Paso County, it's in Hudspeth County which is a huge county and has like 30,000 people in it. I mean, it's a huge county, like bigger than most, like four or five northeastern states.

MR. OXER: It's like where I grew up, it's got more cows than it has people in it.

MR. BOWLING: Right. And then the final thing I want to speak to is a matter of process. When they got this notice back in April or May, whenever it was, they were asked as an applicant as an applicant we get five
days, seven days to respond -- provide proof that the railroad is 100 feet away. The survey you have is dated like July 11, July 12. They sat on the sideline and didn't address staff's request for like three months, and we're supposed to lose a point every day or there's some mechanism. This thing should be down to zero points even if you approve this. So I don't understand how this is now new information being brought forth 60 days, 70 days after staff asked for clarification. They never provided it.

I don't think that that survey that you have in front of you -- I look at a lot of surveys as a normal course of business -- you have a point and a point that makes a segment when a surveyor gives you a dimension. You have a line, you have a point and an arrow on that, it doesn't specifically say. Then there's some note about centerline being 104, but why is there not a point and a point? If they wanted to point the railroad and the rail itself, why is that dimension not there? I mean, there's still at this point lacking what staff asked for which was provide us data and documentation that you're more than 100 feet away from the railway, however you want to define it, railroad, rail whatever. But they're not giving you a point and a point on that survey. So I think that's telling as well.
Time up. I'm good.

MR. OXER: Okay. Thanks, Bobby. We appreciate your comments.

Marni.

DR. MUÑOZ: Just a minute, Robbye. I've got a question for Marni.

Marni, do you have any doubts as to the veracity, the accuracy of the survey information that you've been provided?

MS. HOLLOWAY: As I said, we contacted the surveyor as we were working through the site eligibility issue. We had asked for third party information earlier, we didn't get it. We looked at the site eligibility, we were looking at the survey, we weren't sure. We contacted the surveyor and the next day -- was it the next day? -- we got the revised survey with 106-1/2 feet on it and the surveyor has not responded to our question about was this from an actual measurement.

MR. OXER: That was July 11 when you go that?

MS. HOLLOWAY: Yes. As we've been working through and trying to get this all together.

MR. OXER: So speak to Bobby's issue about this being requested.

MS. HOLLOWAY: As I said, there as the administrative deficiency earlier regarding the ESA. Out

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of the result of that, we moved to the site ineligibility.

MR. GOODWIN: The survey I see, Marni, was dated February 25.

MS. HOLLOWAY: Yes. There is an earlier one.

MR. GOODWIN: This one shows 106.5 feet.

MS. HOLLOWAY: From February?

MR. GOODWIN: Well, that's the date on the survey. That doesn't mean you received it.

MS. HOLLOWAY: The hard copy survey --

MR. GOODWIN: This is the one I'm looking at right here. It says February 25, 2016. They may not have sent it.

MS. HOLLOWAY: The one that we had previously that we weren't sure of what it was measuring to was 100.5.

MR. OXER: He's showing, the best I can tell on this, this is 106.5 from the corner to the centerline, and those are the tracks.

DR. MUÑOZ: And that's dated in February, not July.

MS. HOLLOWAY: I'm going to ask Sharon because she's been working on this more than I have.

MS. GAMBLE: Hello, Board. Sharon Gamble, administrator for the Tax Credit Program.

There was a survey in the application, and
that's probably the one that says February that you're looking at, and I do believe it said 105 feet at the closest point. Also, though, with the application was when we got the environmental site assessment and the environmental site assessment said 50 feet, and that is the issue, that inconsistency is what initially raised our question about why does the ESA say 50 feet but your site plan or your survey says 106 feet, and that's how this started.

MR. OXER: Okay. So what was the answer?

MS. BAST: Mr. Oxer, the answer was that the environmental consultant made an error, and with all due respect to Mr. Bowling, that administrative deficiency was responded to within the time frame. We were given a request to resolve that, to reconcile those two things. The environmental consultant said, Oh, we made an error, and they submitted an amendment to their ESA that said -- it's changed to say: The subject site is approximately 106.5 feet from the nearest boundary line to the nearest rail of the Southern Pacific Railroad.

MR. OXER: The nearest rail.

MS. BAST: This says to the nearest rail of the Southern Pacific Railroad. And this is the letter dated May 2, 2016 that was submitted. And so this is a third party provision. That's what staff asked for is a third
party response, and so they submitted a third party response.

Staff subsequently came back to us, and this was much later that staff came back, and said, We're concerned that that third party response that the environmental consultant was relying on a map that was drawn by the applicant, not by something more professionally measured.

MR. OXER: More authoritarian

MS. BAST: Correct. And so then you have in your book a subsequent letter from the consultant who said, I relied on that survey. And that survey is that February 25 survey, Mr. Goodwin, that you found. He said, When I looked at this, I relied on that survey to make the revision to my ESA that said 106.5 feet.

So that's how the materials were submitted procedurally and the administrative deficiency was responded to timely.

MR. GOURIS: Can I pick up the story from there? Tom Gouris, deputy executive director.

MR. OXER: You had to come up, Tom, we haven't seen you all day.

MR. GOURIS: I did. I haven't been up, I've been sitting on the edge of my seat.

So when we looked at that survey then, that
survey showed that it's from the centerline, and so that
begged the question because the third party said it was to
the rail which might have been okay, but it looked like
they were reading what looks like something that went to
the centerline. And so we asked the surveyor, not the
applicant, we went right back to the surveyor and said,
How did you measure that, is that to the centerline? And
he said, Yes, in fact that is the centerline. And we
said, Well, could you update the survey, give us a sense
for if you measured the distance of the rail and the
subgrade and what-have-you and could you send that back to
us? And so he sent us this copy that was handed out today
that said the 105, which he just subtracted six feet.

So we put another call in to him and email in
to him, but we haven't got a response back for how he got
that six feet. That's when we sent out staff out to look
and see how much subgrade. We keep calling it subgrade
but I think it's actually the ballast, actually that stone
that holds the ties up.

MR. OXER: It's actually the vibration dampener
for the entire railroad, but go ahead.

MR. GOURIS: So how far that went out, and
that's when he went from the centerline over the railway
that was there to the edge of those rocks, as it were,
that he measured that and told us that that distance from
the middle to the edge was between 8-1/2 and 14 feet.

MR. OXER: However this comes out -- which we haven't decided yet -- but however, fix this next year.

MR. GOURIS: Half mile?

MR. OXER: Something inside 12-, 14,000 feet.

MR. GOURIS: And so I'd point out that the easement for the railroad runs right up to the site, the railroad easement abuts the site.

MR. OXER: Basically, the railroad easement is the property line, more or less.

MR. GOURIS: In theory, they could move the track six feet over or anywhere within that easement. And there's also an arroyo right there, there's a little bridge and an arroyo, and that's part of the reason for the ponding area so when that arroyo flows there's a place for it to resolve. So there are dual purposes for all that stuff.

MR. OXER: Who made the motion on this?

DR. MUÑOZ: I did.

MS. MEYER: I didn't want to speak but I'm going to have to now just to bring out a couple of points.

MR. OXER: You have to tell us who you are.

MS. MEYER: Robbye Meyer, Arx Advantage. I'm the consultant for the applicant.

Mr. Bowling brought up a couple of points.
One, that the applicant owns the property. I'm not really sure what that has to do with anything that you're looking at today.

What's on the agenda for today is the ineligibility of the railroad. It doesn't have to do with market, it doesn't have to do with ownership of the property, it has to do with the railroad and that's what's before you today. There has been a mention of market. It's West Texas, there are always market issues with rural Texas and this is part of Rural Texas. But we ask that you reserve the market issues, let us bring those up with Real Estate Analysis later on. We had previous market issues with an application in 2015 and we gave supplemental data for that application. That particular development is now 60 percent full.

DR. MUÑOZ: Robbye, let me interrupt you. Do you want to speak to this distance issue or just to what Bobby said? I mean, all you're doing is expanding what he contributed which you may or may not disagree with, but do you have something to say about our better understanding this distance issue?

MR. OXER: This is hinging on the railroad.

MS. MEYER: I don't want to say anything about the railroad. I just want to make sure that if you're going to consider market issues, I would rather you not.
DR. MUÑOZ: We're considering what's before us here in this application, not necessarily what Mr. Bowling might have contributed.

MS. MEYER: Well, if you're going to take all of that off the table, then I'll sit down and I'd go home. Just as long as that's off the table, then I'll bid my adieus. Thank you very much.

MR. OXER: Thanks.

MS. HOLLOWAY: Just to be clear, the market analysis questions were not part of this item at all.

MR. OXER: Good. Stop.

DR. MUÑOZ: Marni, about this distance, I mean, seems like we're going through a lot of trouble for two feet here, five feet.

MS. HOLLOWAY: Two feet here, five feet there, keep in mind that we're still talking about putting a general population housing development within 100 feet of a railroad track.

MR. OXER: But as they pointed out, they're also willing to put in the noise mitigation and the separation. I'm not going to assume anything, I'm going to ask directly. We'll expect you to have some physical separation between the railroad, essentially along your property line, so that kids, for example, don't get there and meander out on the tracks.
SPEAKER: There will be a six foot high rock wall.

DR. MUÑOZ: Marni, is there something magical about 100 feet?

MS. HOLLOWAY: I don't know, and actually it's one of our problems that we're working through with this rule. Right now under our current rule you can be 100 feet away from a railroad track but you have to be 300 feet away from a lingerie store.

MR. OXER: Those can be really dangerous. Those are dangerous to different people.

(General laughter.)

MS. HOLLOWAY: And frankly, no one has really been able to say why this measurement is here. The Department of Transportation currently is making recommendations for literally the half mile that Tom mentioned for oil trains.

MR. OXER: For the oil trains I can see how that might be a concern, given there's a couple of places up in North Dakota that had some issues with those. I think one of them burned down most of the middle part of the town.

DR. MUÑOZ: Marni, I'll just say this and then we'll stop. Like when I grew up, I grew up pretty close to a train track, I'm sure it was more than 100 feet, it
might have been 300 feet, and there must have been 100
houses between my house and the train track, and you heard
the train track. There was nothing that was going to stop
it. And then I lived in a house and we were close to a
subgrade highway that wasn't there when I bought the house
and they told us they were going to build a highway there,
it's a big highway now. And it was 40 feet down, maybe
more, with a ten-foot noise abating wall with vegetation
to capture ambient, and it didn't make a difference.

MS. HOLLOWAY: It doesn't look like that worked
real well for you.

DR. MUÑOZ: So you know, you're going to hear
it. So that's why asked the question, 100 feet, 105,
105.5, 106.

MS. HOLLOWAY: Again, as Ms. Bast has said,
these are the rules that we have to deal with right now
today.

MR. OXER: The current QAP says 100 feet,
existing rules, irrespective of what we would like them to
be, what they are is 100 feet.

MS. HOLLOWAY: And we have a concern that we
are right at that 100 feet and we don't have confidence
that that's the accurate measurement.

MR. OXER: Okay. And with respect to whether
or not -- my inclination, when someone says railroad
track, I see metal as opposed to dirt down at the bottom of the hill.

Are there any other questions from any other Board member? Anybody else want to say anything else over there?

(No response.)

MR. OXER: Okay. There was a motion by Dr. Muñoz, second by Ms. Bingham.

DR. MUÑOZ: I withdraw my motion.

MS. BINGHAM ESCAREÑO: Me too.

MR. OXER: Okay.

MR. GOODWIN: I move to deny staff's recommendation.

MR. OXER: Motion by Mr. Goodwin to deny staff recommendation which would make the site eligible. So it would be eligible.

MR. GOODWIN: Make it eligible.

MS. HOLLOWAY: Would make it eligible. Yes, it would.

MR. OXER: Okay. Motion by Mr. Goodwin. Do I hear a second?

MS. BINGHAM ESCAREÑO: I'll second.

MR. OXER: Second by Ms. Bingham.

Motion by Mr. Goodwin, second by Ms. Bingham to deny staff recommendation which would essentially make
this site eligible to continue in this round. Those in
favor?

(A chorus of ayes.

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

Was that four for four, Cynthia? You'd better
go home.

Sharon.

MS. GAMBLE: Yes, sir.

MR. OXER: One at a time?

MS. GAMBLE: However you want to do it, sir.

MR. OXER: We've got the bunch, we've got six
in the pile here, so unless there's something unique.

MS. GAMBLE: I can tell you very quickly.

Sharon Gamble, administrator for the Tax Credit Program,
talking about staff determinations regarding application
disclosures.

We do have six applications here. The first
application, Timber Ridge, basically meets an exception
that's provided in the rules because it's a preservation
deal, it preserves existing affordable housing and it has
existing rent restrictions with the USDA. And so that one
staff has determine should be eligible based on that
exception.

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The next four, Heritage Pines, Hawks Landing, Gala at Four Corners, and Provision at Clodine Road, staff reviewed those and we looked at all of the things in the environmental site assessments, other information about the neighborhoods, and staff has determined on those four that the undesirable characteristic that was disclosed is not of such a nature or severity that it should render the development site ineligible. So we're asking you to find those next four eligible based on that determination.

The last one, 16317 Blue Line Lofts, is one that we would like to discuss because we are recommending that it be found to be an eligible site but we are asking that a condition be placed on that finding, some mitigation conditions be placed on that finding.

MR. OXER: So as it currently stands, it would be ineligible. If they're willing to agree to the mitigation, you would find it acceptable and eligible.

MS. GAMBLE: Yes, sir.

MR. OXER: Any questions of anybody? We'll take them all as a group.

MR. GOODWIN: Move approval.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Mr. Goodwin, second by Ms. Bingham to approve staff recommendation on all applications under item 6(d). There's no request for
public comment. Motion by Mr. Goodwin, second by Ms. Bingham to approve staff recommendation on item 6(d).

Those in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none.

It looks like you get number (e) too, don't you?

MS. GAMBLE: Yes, I do.

Number (e) is sort of a continuation of the item on third party requests for administrative deficiency that we presented at our last Board meeting. I forgot to put these two on the agenda so we're bringing them this time. I don't think either of these is controversial. We'll see if there's any public comment. The first one, Cottages at San Saba, that one actually came to the Board meeting, there was actually a good bit of discussion on that. They lost points and they appealed and this Board denied that appeal and that was basically the end of any action regarding that request.

The second one listed, 16168 Stone Bridge at Whitehouse, that application lost appeals. They appealed and the executive director denied their appeal but they did not appeal to the Board, they decided not to bring...
that appeal forward, and so that essentially ended any
action on that recommendation.

And there's no action required here, we just
bring these to you just to let you know what we're doing.

MR. OXER: So essentially these were issues
that came up, processed through procedure, went through
the procedure internal to the agency, stopped at the E-D
and it was resolved at that point.

MS. GAMBLE: Yes, sir.

MR. OXER: Any other questions.

(No response.)

MR. OXER: Good. Thanks.

MS. GAMBLE: Thank you.

MR. OXER: All right. We have arrived at the
point in the agenda to accept public comment on matters
other than items for which there were posted agenda items.

This is for the purpose of building our future agendas so
we can announce these pieces of information or items to
consider for other persons to respond to.

Barry.

MR. KAHN: Good afternoon. My name is Barry
Kahn. I'm a developer in Houston, Texas.

First of all, I'd like to introduce to the
Board Alex Hammond who is the new chief of staff with
Carol Alvarado's office.
MR. OXER: Welcome aboard.

MR. KAHN: Anyhow, the reason I'm speaking to you has to do with the missing element with high opportunity points tied to education where we're leaving behind those in minority neighborhoods.

Take a city like Houston which is majority minority. You've got a very poor school system. Over 40 percent of the schools are rated D or F by Children at Risk. So people in many of the neighborhoods are at risk anyhow due to schools. With not allowing housing in these neighborhoods, it puts them further at risk.

Now, some of you don't know this, but my wife is one of the national leaders in childhood development, appointed by the president to be on a commission and so childhood development is very important to us. It's being neglected due to our point system.

I've spoken to Ann Lott and a number of other people and have a suggestion. I've got a number of comments in writing, I'm not going to spend your time reading them, but the bottom line is we have an obligation under the furthering affirmative rule which requires a focus on replacing segregated living patterns with integrated and balanced living patterns and transforming racially and ethnically concentrated areas of poverty in the areas of opportunity. Well, if we deny all these
areas any type of new housing, which in turn brings new commercial, new jobs, other types of opportunity to these areas, we're pushing further and further behind.

I'm fully aware of the ICP lawsuit, done a lot of stuff with regard to trying to follow it and find improvements. There's lots of contesting each year when the QAP comes out on should this be a priority, should that be a priority. Essentially I have a very simple solution for you. The last few years have been all high opportunity, very low opportunity areas have hardly gotten any deals, revitalization requirements are over strenuous for the cities.

And why don't you just come up with a simple policy? Next year all deals in the bottom 50 percent census tracts with no educational requirement, the following year they're all in high opportunity areas with an educational requirement, and then you start alternating. That way you create balance which is the whole underlying aspect of the furthering affirmative rule published by HUD, and you're meeting both goals and you aren't doing it in a contested manner. It's very simple, and you don't leave behind people which is in effect what you're doing now.

And I'm happy to answer any questions.

Sometime something simple is too easy to accept.
DR. MUÑOZ: Hey, Barry. I appreciate the proposition. You sit up here and we face allegations and lawsuits if you put properties in the communities that the people and the neighborhoods want.

MR. OXER: Unfortunately, we can't engage in a discussion on this or anything else because it hasn't been posted on the agenda, but we appreciate your comments on it, Barry. If it comes up as an agenda item, then we'll talk about it.

DR. MUÑOZ: I'll say more at the next meeting.

MR. KAHN: Well, you've got my phone number on the letterhead. I don't think there's anything against the law of speaking one on one since it wouldn't be a public hearing.

Thank you.

MR. OXER: Thanks, Barry.

Anybody else in the audience wish to say anything? Any of the staff want to say anything?

(No response.)

MR. OXER: Come on, Tom, I haven't even used the tractor analogy today.

Anybody on the dais? Michael, have you got any comments from our Twitter feed? Everything good? Any other Board member?

(No response.)
MR. OXER: Mr. E-D, do you wish to have another comment?

MR. IRVINE: I believe Marni can confirm or deny, but don't we have a QAP roundtable tomorrow?

MS. HOLLOWAY: There is in fact a QAP roundtable scheduled for tomorrow morning at the Thompson Center on the UT campus. We're going to be starting at 9:00, from 9:00 to noon.

DR. MUÑOZ: Where? At the what?

MS. HOLLOWAY: The Thompson Center on the UT campus.

MR. IRVINE: Couldn't get in at Tech.

(General laughter.)

MR. OXER: I have one procedural item. Is Michael DeYoung here?

MR. IRVINE: He's gone.

MR. OXER: I don't know if you can do this or not, Nancy. On item 5, did we address both items that were listed on there?

THE REPORTER: No, sir.

MR. LYTTLE: From my notes with the Tweets, you only addressed the Denton appeal, not the second one.

MS. SYLVESTER: Megan Sylvester, Legal Division.

I believe that appeal was pulled and it's
reflected in the Board supplemental materials. The one that you addressed was TX-607COD.

MR. OXER: We did the one for the City of Denton but we didn't get to the one for Lubbock because it was pulled.

MS. SYLVESTER: Correct.

MR. OXER: All right. I just wanted to check and make sure we put a checkmark by that.

Any other Board member? Mr. E-D, do you have any final comment?

(No response.)

MR. OXER: All right. I get the last word, as I always do. I appreciate the effort that everybody puts in. I am very grateful, as we all are up here, for the efforts that everybody over at 221 East 11th Street puts in, so thanks again to everybody that's in there watching in.

So we have another meeting scheduled two weeks from today. We'll remain on our uniform code for that one, summer casual.

With that, we'll entertain a motion to adjourn.

MR. GOODWIN: So moved.

MR. OXER: Motion by Mr. Goodwin.

DR. MUÑOZ: Second.

MR. OXER: And a second by Dr. Muñoz to
adjourn. All those in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. See you in two
weeks, everybody.

(Whereupon, at 3:40 p.m., the meeting was
adjourned.)
CERTIFICATE

MEETING OF:          TDHCA Board
LOCATION:           Austin, Texas
DATE:               July 14, 2016

I do hereby certify that the foregoing pages, numbers 1 through 217, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

07/19/2016
(Transcriber)       (Date)

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